(19,046.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 103.

SWIFT AND COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Caption	1	1
Præcipe for record	3	1
Placita	4	2
Petition	7	3
Subpœna and return	23	11
Order of May 20, 1902, for temporary injunction	27	14
Injunction writ, together with marshal's return thereon	30	16
Appearance for defendants	37	20
Demurrer of Swift & Company *et al*	39	21
Demurrer of Nelson Morris *et al*	42	23
Order of December 16, 1902, taking demurrers under advisement	44	25
Opinion	46	26
Order of April 4, 1903, overruling demurrers, &c	48	33
Order of April 22, 1903, entering default of defendants	52	35
Order of May 26, 1903, suggesting death of G. F. Swift	54	36
Decree of May 26, 1903	55	36
Petition for appeal	59	39
Assignment of errors	62	41
Order of July 18, 1903, allowing appeal	81	50
Appeal bond	84	51
Clerk's certificate	90	55
Citation and service	91	55

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 8, 1904.

1 In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, The Hammond Packing Company, and Armour and Company, Corporations under the Laws of Illinois; The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Corporations under the Laws of New Jersey, Michigan, and New York, Respectively; Nelson Morris, Edward Morris, and Ira N. Morris, Co-partners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, Citizens of Illinois; Edward C. Swift, a Citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, Citizens of the State of New York. } 26291.

2 Mr. S. H. Bethea, United States attorney, northern district of Illinois,
Mr. Philander C. Knox, Attorney General of the United States,
Mr. John K. Richards, solicitor general of the United States,
Mr. W. A. Day, special assistant attorney general for the United States of America,
Mr. John S. Miller for the defendants.

3 *Pracipe for Transcript.*

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY ET AL. } No. 26291.

To the clerk of the above entitled court:

You will please prepare transcript of the record in this cause to be filed in the office of the clerk of the Supreme Court of the United States, at Washington, District of Columbia, under the appeal here-

tofore perfected to said court and include in the said transcript the following pleadings, proceedings, and papers on file, to-wit:

Petition filed May 10, 1902.
Subpœna and marshal's return thereon endorsed,
Order of May 20, 1902,
Injunction writ together with marshal's return thereon endorsed,
Appearance of defendants, filed July 3, 1902.
Demurrer of Swift & Company, *et al.*, filed August 4, 1902.
Demurrer of Nelson Morris, *et al.*, filed Aug. 4, 1902,
Order of December 16, 1902,
Opinion filed Feb. 18, 1903,
Orders of April 4 & 22, 1903,
Order of May 26, 1903.
Decree of May 26, 1903.
Petition for appeal & assignment of errors filed July 18, 1903,
Order of July 18, 1903, allowing appeal,
Bond on appeal, filed July 18, 1903.

Said transcript to be prepared as required by law and the rules of this court and the rules of the Supreme Court of the United States and on file in the office of the clerk of the said Supreme Court at Washington, before August 17, 1903.

JOHN S. MILLER,
MERRITT STARR,
Solicitors for Appellants.

(Endorsed:) Filed August 12, 1903, Marshall E. Sampsell, clerk.

4 Pleas in the circuit court of the United States for the northern district of Illinois—northern division, in chancery sitting at the United States court room, in the city of Chicago, in said district and division, before the Honorable Peter S. Grosscup, circuit judge of the United States for the seventh judicial circuit, on Tuesday, the twenty-sixth day of May, in the year of our Lord one thousand nine hundred and three, being one of the days of the regular December term of said court, 1902, and of our Independence the one hundred and twenty-seventh year.

MARSHALL E. SAMPSELL, *Clerk.*

5 In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, The Hammond Packing Company, and Armour and Company, Corporations under the Laws of Illinois; The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Corporations under the Laws of New Jersey, Michigan, and New York, Respectively; Nelson Morris, Edward Morris, and Ira N. Morris, Copartners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, Citizens of Illinois; Edward C. Swift, a Citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, Citizens of the State of New York. } 26291.

6 Be it remembered that on this day to-wit: the tenth day of May, 1902, came the United States of America by Mr. S. H. Bethea, United States attorney, Mr. Philander C. Knox, Attorney General of the United States, Mr. John K. Richards, solicitor general of the United States and Mr. W. A. Day, special assistant attorney general and filed in the clerk's office of said court in the above entitled cause a certain petition in the words and figures following to-wit:

7 In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE UNITED STATES OF AMERICA
v.
SWIFT AND COMPANY and Others.

Petition.

To the honorable the judges of the circuit court of the United States of America for the northern district of Illinois, northern division, sitting in equity:

Your petitioner, The United States of America, by S. H. Bethea, its attorney for the northern district of Illinois, acting by and under

the direction of Philander C. Knox, its Attorney-General, brings this, its bill of complaint, against Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, and Armour and Company, corporations organized and existing under and by virtue of the laws of the State of Illinois; the Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company corporations organized and existing under and by virtue, respectively, of the laws of the States of New Jersey, Michigan, and New York; Nelson Morris, Edward Morris, and Ira N. Mor-
8 ris, copartners under the name of Nelson Morris and Company, doing business at Chicago, Illinois, East St. Louis, Illinois, and South St. Joseph, Missouri, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder, and Henry Veeder, citizens, respectively, of the State of Illinois, residing at Chicago, Edward C. Swift, a citizen of the State of Massachusetts, residing at Boston, and Ferdinand Sulzberger and W. H. Noyes, citizens of the State of New York, residing at the city of New York in that State, and on information and belief, alleges and respectfully shows to your honors:

First. That said corporations, partnership, and persons for many years last past have been and now are engaged in the business of buying live stock, to wit, cattle, sheep, and hogs, at divers points throughout the said United States where stock yards and such like open and competitive markets for the sale of live stock exist—at Chicago, in the State of Illinois; Omaha, in the State of Nebraska; Sioux City, in the State of Iowa; St. Joseph, in the State of Missouri; Kansas City, in the State of Missouri; East St. Louis, in the State of Illinois, and St. Paul, in the State of Minnesota—and slaughtering such live stock at the several extensive plants for that
9 purpose maintained by certain of the said defendants, respectively, to wit, the plants of Armour and Company, at the city of Chicago in the State of Illinois; at the city of East St. Louis, in the State of Illinois; at the city of Kansas City, in the State of Missouri; at the city of South Omaha, in the State of Nebraska, and at the city of Sioux City, in the State of Iowa, the plants of the Cudahy Packing Company at South Omaha, Kansas City, and Sioux City, aforesaid, and at Cudahy, in the State of Wisconsin; the plants of the Hammond Packing Company at Chicago and Omaha, aforesaid, Hammond, in the State of Indiana, and South St. Joseph, in the State of Missouri; the plants of Nelson Morris and Company at Chicago, East St. Louis, and South St. Joseph, aforesaid; the plants of the Schwartzchild and Sulzberger Company at Chicago and Kansas City, aforesaid, and the plants of Swift and Company at Chicago, East St. Louis, South St. Joseph, Kansas City, and South Omaha, aforesaid, and St. Paul, in the State

of Minnesota, and at the said several plants converting the said live stock into fresh meat for human consumption.

Second. That the said defendants for many years last past have been and now are also engaged in the business of selling such fresh meats, at the several places where they are so prepared, to dealers and consumers in divers States and Territories of the said United States other than those wherein the said meats are so prepared and sold as aforesaid, and in the District of Columbia, and in foreign countries, and shipping the same meats, when so sold from
10 the said places of their preparation, over the several lines of transportation of the several railroad companies serving as common carriers, to such dealers and consumers, pursuant to such sales; and in so doing have been and are engaged in trade and commerce among the several States and Territories of the United States and the District of Columbia, and with foreign nations.

Third. That the said defendants for many years last past have been and now are also engaged in the business of shipping such fresh meats from the said several points where the same are so prepared for consumption, over the several lines of transportation of the several railroad companies serving the same as common carriers, to their respective agents located at and near the principal markets for such meats in other States and Territories than those wherein the said fresh meats are so prepared for consumption as aforesaid, and in the District of Columbia, and in foreign countries, for sale by those agents in those markets and in such other States and Territories and the District of Columbia, and in foreign countries, to dealers and consumers; and have been and are through those agents selling the same in those markets, and in so doing have been and are engaged in trade and commerce among the several States and Territories of the United States and the District of Columbia, and with foreign nations.

Fourth. That of the total volume of trade and commerce among the said States and Territories and District of Columbia in fresh meats the said defendants together control about sixty per
11 cent., having during the year 1901 purchased and slaughtered as aforesaid, and sold and shipped in the form of fresh meats as aforesaid, four million cattle, five million sheep, and six million hogs.

Fifth. That as to such trade and commerce among the several States and Territories and District of Columbia and with foreign nations in fresh meats the said defendants should, and but for the acts hereinafter complained of would, be and remain in free and unrestrained competition with each other.

Sixth. That the said defendants, in violation of the provisions of an act of Congress, approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and in order to restrain competition among themselves (which would otherwise exist) as to the purchase of live stock necessary to the production of the meats produced by them, have engaged in and

intend to continue an unlawful combination and conspiracy between themselves for directing and requiring their respective purchasing agents at the said several stock yards and open and competitive markets where they customarily purchase such live stock, to wit, Kansas City and St. Joseph, Missouri; Omaha, Nebraska; Sioux City, Iowa; St. Paul, Minnesota; East St. Louis and Chicago, Illinois, aforesaid (the same being live stock produced and owned principally in other States and Territories of the United States, and shipped by the owners thereof to such stock yards and open markets
12 for competitive sale to *persons and* corporations engaged in producing and dealing in fresh meats in the manner aforesaid) to refrain from bidding against each other, except perfunctorily and without good faith when making purchases of such live stock on behalf of the said defendants respectively, and by this means inducing and compelling such owners of such live stock to part with the same at such stock yards and open markets at prices less than they would there receive if such bidding were really competitive as between the said purchasing agents of the said defendants; and the said defendants have caused and are causing their agents respectively to refrain from bidding accordingly, and have induced and are inducing each other and will, unless restrained by this honorable court, continue in pursuance of such conspiracy, to induce each other to refrain from bidding as aforesaid, which aforesaid combination and conspiracy is one in restraint of trade and commerce among the several States and Territories of the said United States and the District of Columbia and with foreign countries.

Seventh. That the said defendants, in further violation of the provisions of the said act of Congress approved July 2, 1890, and in order to further restrain competition among themselves, which would otherwise exist, as to the purchase of live stock necessary to the production of the meats produced by them, and to obtain for themselves and each other undue advantage over the owners and shippers thereof in the buying of the same at the said several stock yards and
13 open markets, have engaged in and intend to continue an unlawful combination and conspiracy among themselves for bidding up, through their respective purchasing agents, the prices of live stock for a few days at a time at the said stock yards and open markets, so that the market reports will show prices much higher than the state of the trade will warrant, and thereby inducing owners of such live stock in divers other of the said States and Territories to simultaneously make large shipments of such live stock from such other States and Territories to such stock yards and open markets, instead of shipping the same to more natural and advantageous markets and at more natural and advantageous times in the due and proper course of such trade and business, and by this means and by reason of the resulting large offerings there of such live stock (and by thereupon refraining from bidding against each other for the same), obtaining such live stock at prices much less than it would bring in the regular way of trade if such combination and conspir-

acy were not so engaged in and continued; and have been and are now from time to time through their said agents so fraudulently bidding up the prices of such stock, and will, unless restrained by this honorable court, continue to do so; which said combination and conspiracy last aforesaid is also one in restraint of trade and commerce among the several States and Territories of the said United States and the District of Columbia and with foreign countries.

Eighth. That the said defendants, in violation of the provisions of the act of Congress of the said United States, approved July 2,
14 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and in order to restrain and destroy competition among themselves as to such trade and commerce, and monopolize such trade and commerce, have engaged in and intend to continue an unlawful combination and conspiracy to arbitrarily from time to time raise, lower, and fix prices, and to maintain uniform prices at which they will sell, directly or through their respective agents, such fresh meats to dealers and consumers throughout the said States and Territories and the District of Columbia and foreign countries; and that the arbitrary raising, lowering, fixing, and maintaining of such prices, in pursuance of the said combination and conspiracy, is being and is to be effected through the action of divers of their agents and attorneys to your petitioner unknown, in secretly holding periodical meetings at some place or places to your petitioner unknown, and there agreeing upon the prices to be adopted by the said defendants, respectively, in such trade and commerce, to be enforced by them until at a subsequent meeting the same may be changed; which said prices are notified by letters and telegrams in plain language and divers codes and ciphers; and they have been and are maintained by said defendants by adhering to the same in their sales made directly, and, among other ways, by collusively restricting and curtailing the quantities of such meats shipped by them in such trade and commerce to the markets aforesaid, whenever necessary or conducive to the maintaining of the prices so
15 fixed; by imposing against each other divers penalties for any and all deviations by the said defendants or any of them from the prices so fixed; by establishing a uniform rule for the giving of credits to dealers throughout the said States and Territories and District of Columbia and foreign countries, and for the conduct of the business of such dealers, with penalties as between the said defendants for violations thereof; by notifying each other of the delinquencies of the said dealers, and keeping what is commonly known as a "black list" of such delinquents, and refusing to sell such meats to any of such delinquents; which said combination and conspiracy above set forth is one in restraint and monopoly of commerce among the several States and Territories of the said United States and the District of Columbia and with foreign countries.

Ninth. And the said defendants, in violation of the provisions of the said act of Congress approved July 2, 1890, have engaged in and intend to continue an unlawful combination and conspiracy to direct

and require their respective agents at and near many of the markets for such fresh meats throughout the said several States and Territories and the District of Columbia to arbitrarily make and impose uniform charges for cartage for the delivery, upon making sales to dealers and consumers in those markets, of the meats shipped to them through the said agents by the said defendants, respectively, from their said several points of preparation of the same, when no such charges have been or are customary in such trade and
16 commerce, or would be made but for said combination and conspiracy, thereby increasing the charges for such meats to said dealers and consumers in such markets and preventing the purchase of the same by those who are unable or unwilling to pay more than the price of the meats themselves without such additional charge; which said combination is also in restraint of such trade and commerce aforesaid.

Tenth. That notwithstanding the common carriers by railroad subject to the provisions of the laws of the United States for the regulation of commerce have established and published, and do now and will establish and publish, respectively, their schedules of rates, fares, and charges for the transportation of live stock to the places of its conversion into such meats as aforesaid, and for the transportation of such meats as aforesaid, and notwithstanding such rates were, and are, and will be the only lawful rates for the transportation as aforesaid of such articles, the said defendants, intending thereby to monopolize and attempt to monopolize the commerce aforesaid and prevent competition therein, have all and each engaged in and will continue arrangements and agreements with divers officers and agents of such common carriers, whereby said defendants were to receive and have received and will continue to receive, by means of rebates and other devices, unlawful rates for such transportation, much less than the said lawful rates, and were to exclusively enjoy and share said unlawful advantage to the exclusion of competitors
17 and would-be competitors and the general public, and have accordingly so enjoyed and shared them, and will, unless restrained by this honorable court, continue to do so; and by force of the consequent inability of competitors and would-be competitors to engage or continue in such commerce without ruinous loss have monopolized and are monopolizing and will continue to monopolize the said commerce, and have attempted and are attempting and will attempt to monopolize such commerce in live stock and fresh meats among the States and Territories and the District of Columbia and with foreign countries; which scheme to monopolize is also a combination and conspiracy in restraint of trade and commerce among the States and Territories and the District of Columbia and with foreign countries.

Eleventh. That the said defendants now are and for years past have been in combination and conspiracy with each other and with the railroad companies and others to complainant unknown, to obtain a monopoly of the supply and distribution of fresh meats

throughout the United States and its Territories and shipments thereof to foreign countries.

To that end the defendants do and will artificially restrain such commerce and put in force abnormal, unreasonable, and arbitrary regulations for the conduct of their own and each other's business, affecting the same from the shipment of the live stock from the plains to the final distribution of the meats to the consumer, all to the manifest injury of the people of the United States and in defiance of law.

18 Wherefore, may it please your honors to forthwith grant a writ of injunction directed to the said defendants, their agents, attorneys, and all other persons acting, or claiming or assuming to act, under their authority, or that of any of them, enjoining them and each of them, and each of their agents, attorneys, and the other persons aforesaid, from continuing each and any of the unlawful proceedings aforesaid, and from attempting to monopolize, in the manner aforesaid or in any other manner, and by any other means and devices, the commerce aforesaid, or any part thereof, or any part of the trade or commerce among the States and Territories, and District of Columbia, and with foreign nations, and especially from refraining and instructing their respective purchasing agents to refrain from bidding against each other except perfunctorily and without good faith in making purchases of live stock, and from inducing each other to so refrain, and from engaging in any combination or conspiracy, understanding or arrangement, for the purpose of bringing about such refraining from competitive bidding, and from bidding up the prices of live stock at the stock yards and open markets higher than the state of the trade will warrant, and from arbitrarily raising, lowering, fixing, and maintaining prices of their and each other's products, and from maintaining prices so fixed and uniform prices by adhering to the same in their sales, or by restricting the quantities of meats shipped, or by imposing penalties upon themselves and each other, or by making uniform rules for credits to dealers, or

19 by making and keeping what is commonly known as a "black list" of delinquent dealers, or by refusing to sell meats to such delinquents, or by any other method or device; and from agreeing with each other and acting in concert, with a view to fixing prices or terms for the sale or delivery of said meat products so sold, in such manner as to prevent free competition in, and restrain or monopolize, such commerce; and from imposing a charge for cartage for the delivery of their products upon making sales to dealers and consumers; and from asking and receiving, by means of rebates or otherwise, from railroad companies, less than the established and published rates for the transportation of their live stock and meat products, until such time as your honors shall appoint and direct for a final hearing herein, and upon such final hearing to make such injunction perpetual—

And your orator further prays discovery of the books, papers,

accounts, letters, telegrams, records, and documents whatsoever of the defendants relating in any manner, directly or indirectly, to the purchase or shipment of live stock by them or their agents, or to the sale or shipment or delivery of fresh meats by them or their agents;

And may it please your honors to grant such other and further relief as equity may require, and to your honors may seem meet;

And your orator prays that a writ of subpœna may issue to the said defendants, Swift and Company, The Cudahy Packing Company, The Hammond Packing Company, Armour and Company, The Armour Packing Company, The G. H. Hammond Com-
20 pany, Schwartzchild and Sulzberger Company, corporations and Nelson Morris, Edward Morris and Ira N. Morris, copartners as Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder and Henry Veeder, Edward C. Swift, Ferdinand Sulzberger, and W. H. Noyes, and each of them, requiring them and each of them, under a penalty and at a time and place to be therein stated, to appear and answer under oath all and singular the matters hereinbefore stated and charged, and abide by and perform such orders as the court may make in the premises.

And your orator will ever pray.

S. H. BETHEA,
United States Attorney, Northern District of Illinois.

PHILANDER C. KNOX,
Attorney-General of the United States.
JOHN K. RICHARDS,
Solicitor-General of the United States.
W. A. DAY,
Special Assistant Attorney-General.

PHILANDER C. KNOX,
Att'y General of the United States.
JOHN K. RICHARDS,
Solicitor General of U. S.
W. A. DAY,
Special Assistant Attorney General.

21 STATE OF ILLINOIS, } ss.
County of Cook. }

Oliver E. Pagin, being duly sworn, on his oath, states that he has read the foregoing bill by him subscribed, and that the statements

therein are true, except as to such matters as are stated on information and belief, and as to those, he believes them to be true.

OLIVER E. PAGIN.

Subscribed and sworn to before me this 10th day of May, 1902.

MARSHALL E. SAMPSELL,
Clerk Circuit Court United States for the Northern District of Illinois.

(Endorsed:) Filed May 10, 1903 Marshall E. Sampsell clerk.

22 And on to-wit: the 14th day of May, 1902, a writ of subpœna issued out of the clerk's office of said court directed to the marshal of said district to execute, which said subpœna together with the memorandum thereto attached and the marshal's return thereon endorsed is in the words and figures following to-wit:

FORM No. 186.

23 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

The United States of America to Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, Armour and Company, the Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations, and Nelson Morris, Edward Morris, and Ira N. Morris, copartners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder, and Henry Veeder, Edward C. Swift, Ferdinand Sulzberger, and W. H. Noyes, Greeting:

We command you and every of you, that you appear before our judges of our circuit court of the United States of America, for the northern district of Illinois, at Chicago, in the northern division of said district, on the first Monday in the month of July next, to answer the petition of the United States of America, filed May 10, 1902, in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago aforesaid, this fourteenth day of May,

in the year of our Lord one thousand nine hundred and two, and of our Independence the 126th year.

[SEAL.] MARSHALL E. SAMPSELL, *Clerk.*

Memorandum.

The above named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

MARSHALL E. SAMPSELL, *Clerk.*

24 I have served the within writ within my district in the following manner to-wit:

Upon the G. H. Hammond Company by delivering a true copy thereof to J. P. Lyman, president of said company this 15th day of May, A. D. 1902.

Also upon the Hammond Packing Company by delivering a true copy thereof to J. P. Lyman, president of said company, this 15th day of May, A. D. 1902.

Also upon Frank E. Vogel, individually by delivering to him personally a true copy thereof, this 15th day of May, A. D. 1902.

Also upon J. P. Lyman, individually by delivering to him personally a true copy thereof, this 15th day of May, A. D. 1902.

JOHN C. AMES,
U. S. Marshal,
By G. M. WHERRITT, *Deputy.*

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

I have served this writ within my district as follows to-wit:

Upon Swift and Company by delivering a true copy thereof to Gustavus F. Swift, president of said company on May 15th, 1902.

Upon Gustavus F. Swift, Louis F. Swift, D. Edwin Hartwell Lawrence A. Carton, Louis Pfaelzer, William Russel, Albert H. Veeder and Henry Veeder, personally, by delivering a true copy thereof to each of them on May 15, 1902.

JOHN C. AMES,
U. S. Marshal,
By A. A. BACH, *Deputy.*

25 I have served this writ within my district in the following manner to-wit: Upon the within named "Armour and Company" a corporation, by delivering a true copy thereof to J. Ogden

Armour, president of the said company on the 15th day of May, A. D. 1902.

Upon the within named "Armour Packing Company" a corporation by delivering a true copy thereof to J. Ogden Armour vice president of the said company on the 15th day of May, A. D. 1902. I was unable to find the president of the said company within my district.

Upon the within named Schwartzchild and Sulzberger, a corporation by delivering a true copy thereof to Max J. Sulzberger, vice president of the said company on the 15th day of May, A. D. 1902. I was unable to find the president of the said company within my district.

Upon the within named "Cudahy Packing Company" a corporation by delivering a true copy thereof to Michael Cudahy, president of the said company on the 15th day of May, A. D. 1902,

Upon the within named Nelson Morris, Edward Morris and Ira N. Morris, co-partners as "Nelson Morris and Company" by delivering a true copy thereof to each of them personally on the 15th day of May, A. D. 1902,

Upon the within named Michael Cudahy, Albert F. Borchert, Charles F. Langdon, Calvin M. Favorite, Patrick A. Valentine, Arthur Meeker and J. Ogden Armour, by delivering a true copy thereof to each of them personally on the 15th day of May, A. D. 1902,

Upon the within named Thomas J. Conners by delivering to him personally a true copy thereof on the 16th day of May, A. D. 1902.

I was unable to find the within named Edward Cudahy, Ferdinand Sulzberger, Patrick Cudahy and W. H. Noyes within my district.

JOHN C. AMES,
U. S. Marshal.
WM. E. CASS, *Deputy.*

(Endorsed:) Filed May 20, 1902, Marshall E. Sampsell, clerk.

26 And on to-wit: the twentieth day of May, 1902, in the December term of said court, 1901, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, circuit judge, appears the following entry to-wit:

27 Circuit Court of the United States, Northern District of Illinois, Northern Division.

TUESDAY, *May* 20, 1902.

Present: Hon. Peter S. Grosscup, circuit judge.

UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, THE Hammond Packing Company, Armour and Company, The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Corporations, and Nelson Morris, Edward Morris, and Ira N. Morris, Co-partners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder, and Henry Veeder, Edward C. Swift, Ferdinand Sulzberger, and W. H. Noyes.

This cause coming on to be heard, upon the motion of the complainants for a temporary injunction, as prayed in said bill, and the complainants having exhibited their sworn bill to the court, and divers affidavits in support thereof, no answer or demurrer having been filed thereto, nor any affidavits in resistance thereof, and the court having heard the arguments of counsel, and being fully advised in the premises, doth order that a temporary writ of injunction issue, restraining, until the final hearing or further order of this court, the said defendants, Swift and Company, The Cudahy Packing Company, The Hammond Packing Company, Armour and Company, The Armour Packing Company, The G. H. Hammond Company, The Schwartzchild and Sulzberger Company, corporations respectively, Nelson Morris, Edward Morris and Ira N. Morris, co-partners as Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur
Meeker, Thomas J. Conners, Charles F. Langdon, Michael
28 Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Brochert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, and each of them, their respective agents and attorneys, and all other persons acting or claiming, or assuming to act under their authority, or that of any of them, from entering into taking part in or performing any contract, combination or conspiracy, the purpose or effect of which

will be, as to trade and commerce in fresh meats, a restraint of trade or commerce among the several States, Territories, and the District of Columbia, either by directing or requiring their respective agents from refraining to bid against each other in the purchase of live stock; or collusively, and by agreement, refraining from bidding against each other at such sales; or by arbitrarily raising or lowering prices; or fixing uniform prices at which said meats will be sold, either directly or through their respective agents; or by curtailing the quantity of such meats shipped to such markets and agents; or by imposing penalties for deviations from prices; or by establishing and maintaining uniform rules for the giving of credit to dealers in such matters; or by imposing uniform charges for cartage and delivery of such meats to dealers and consumers; or by any other method or device, the purpose and effect of which is to restrain trade and commerce, as aforesaid.

And, also, from violating the provisions of an act of Congress, approved July 2, 1890, entitled—"An act to protect trade and commerce against unlawful restraints and monopolies," by combining or conspiring together, or with each other and others, to monopolize or attempt to monopolize any part of the trade and commerce in fresh meats among the several States and Territories and the District of Columbia, by demanding, obtaining, or, with or
29 without the connivance of the officers or agents thereof, or of any of them, receiving from the railroad companies or other common carriers transporting such fresh meats in such trade and commerce, either directly or by means of rebates, or by any other device, transportation of or for such fresh meats, from the points of the preparation and production of the same from live stock or elsewhere, to the markets for the sale of the same to dealers and consumers in other States and Territories, than those wherein the same are so prepared, or the District of Columbia, at less than the regular rates which may be established or in force on their several lines of transportation, under the provisions in that behalf of the laws of the United States for the regulation of commerce.

30 And on to-wit: the 21st day of May 1902, there issued out of the clerk's office of said court in said entitled cause a certain injunction writ, directed to the marshal of said district to execute, which said writ together with the marshal's return thereon endorsed is in the words and figures following to-wit:

Injunction Writ.

Circuit Court of the United States of America, Northern District of Illinois, Northern Division.

THE UNITED STATES OF AMERICA, *ss:*

To Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, Armour and Company, the Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations, and Nelson Morris, Edward Morris, and Ira N. Morris, co-partners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, Edward C. Swift, Ferdinand Sulzberger, and W. H. Noyes, and to your counselors, attorneys, solicitors, trustees, agents, clerks, employees, servants, and workmen, and to each and every of you, Greeting:

Whereas, it hath been represented to the judges of our circuit court of the United States for the northern division of the northern district of Illinois in chancery sitting, on the part of the United States of America, complainant, in its certain bill of complaint, exhibited in our said circuit court, on the chancery side thereof, before
31 the judges of said court, against you, the said Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, Armour and Company, the Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations, and Nelson Morris, Edward Morris and Ira N. Morris, co-partners, as Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder and Henry Veeder, Edward C. Swift, Ferdinand Sulzberger, and W. H. Noyes to be relieved touching the matters complained of, in which said bill it is stated, among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in said bill, and that your actings and doings in the premises are contrary to equity and good conscience. And it being ordered that a writ of preliminary injunction issue out of said court, upon said bill, enjoining and restraining you, and each of you, as prayed for in said bill; we, therefore, in consideration

thereof, and of the particular matters in said bill set forth, do strictly command you, the said Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, Armour and Company, the Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations and Nelson Morris, Edward Morris and Ira N. Morris, co-partners as Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder and Henry
32 Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, and each of you, your respective agents and attorneys and all other persons acting or claiming or assuming to act under your authority, or that of any of you that you do absolutely desist and refrain from entering into, taking part in, or performing any contract combination or conspiracy, the purpose or effect of which will be as to trade and commerce in fresh meats, a restraint of trade or commerce among the several States, Territories, and the District of Columbia, either by directing or requiring their respective agents from refraining to bid against each other in the purchase of live stock or collusively and by agreement, refraining from bidding against each other at such sales; or by arbitrarily raising or lowering prices; or fixing uniform prices at which said meats will be sold, either directly or through their respective agents; or by curtailing the quantity of such meats shipped to such markets and agents; or by imposing penalties for deviations from prices; or by establishing and maintaining uniform rules for the giving of credit to dealers in such matters; or by imposing uniform charges for cartage and delivery of such meats to dealers and consumers; or by any other method or device, the purpose and effect of which is to restrain trade and commerce as aforesaid.

And, also, from violating the provisions of an act of Congress, approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," by combining or conspiring together, or with each other and others, to monopolize or attempt to monopolize any part of the trade and commerce in fresh meats among the several States and Territories and the District of Columbia, by demanding, obtaining, or, with or with-
33 out the connivance of the officers or agents thereof, or of any of them, receiving from the railroad companies or other common carriers transporting such fresh meats in such trade and commerce, either directly or by means of rebates, or by any other device, transportation of or for such fresh meats, from the points of the preparation and production of the same from live stock or elsewhere, to the markets for the sale of the same to dealers and consumers in other States and Territories, than those wherein the same are so prepared, or the District of Columbia, at less than the regular

rates which may be established or in force, on their several lines of transportation, under the provisions in that behalf of the law of the United States for the regulation of commerce, until this honorable court in chancery sitting, shall make other order to the contrary. Hereof fail not, under the penalty of what the law directs.

To the marshal of the northern district of Illinois, to execute and return in due form of law.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago, in said district this 21st [SEAL.] day of May, in the year of our Lord one thousand nine hundred and two and of our Independence the one hundred and twenty sixth year.

MARSHALL E. SAMPSELL, *Clerk.*

34 UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

I have served this writ within my district as follows to-wit:

Upon Swift & Company by reading the same to and within the presence and hearing of Gustavus F. Swift, president of said company and at the same time delivering to him a true copy thereof on May 22nd, 1902.

Upon Swartzchild & Sulzberger Co., by reading the same to and within the presence and hearing of Max Sulzberger, vice president of said company and at the same time delivering to him a true copy thereof on May 22nd, 1902, the president of said company not found in my district.

Upon Gustavus F. Swift, Louis F. Swift, Louis Pfaezler, William Russel, Albert H. Veeder and Henry Veeder, Lawrence A. Carton & D. Edwin Hartwell, by reading the same to and within the presence and hearing of each of them, and at the same time delivering to each of them personally a true copy thereof on May 22, 1902.

JOHN C. AMES,
U. S. Marshal,
By A. A. BACH.

I have served the within writ within my district in the following manner to-wit:

Upon the within named "Armour and Company" a corporation by reading the same to and in the presence and hearing of J. Ogden Armour, president of the said company, at the same time delivering to him personally a true copy thereof on the 22nd day of May A. D. 1902.

Upon the within named "Armour Packing Company" a corporation by reading the same to and in the presence and hearing of J. Ogden Armour, vice president of the said company at the same time delivering to him personally a true copy thereof, on the 22nd day

of May, A. D. 1902, I was unable to find the president of the said company within my district.

35 Upon the within named "Cudahy Packing Company" a corporation by reading the same to and in the presence and hearing of Michael Cudahy, president of the said company at the same time delivering to him personally a true copy thereof on the 22nd day of May, A. D. 1902.

Upon the within named Nelson Morris, Edward Morris, and Ira N. Morris, co-partners as "Nelson Morris and Company" by reading the same to and in the presence and hearing of each of them personally at the same time delivering to each of them personally a true copy thereof on the 22nd day of May A. D. 1902.

Upon the within named J. Ogden Armour, Arthur Meeker, Charles F. Langdon, Thomas J. Conners, Michael Cudahy, Edward A. Cudahy, Calvin M. Favorite and Albert F. Borchart, by reading the same to and in the presence and hearing of each of them personally at the same time delivering to each of them personally a true copy thereof on the 22nd day of May, A. D. 1902.

Upon the within named Patrick A. Valentine by reading the same to and in his presence and hearing at the same time delivering to him personally a true copy thereof on the 24th day of May, A. D. 1902.

I was unable to find the within named Patrick Cudahy, Ferdinand Sulzberger, W. H. Noyes and Edward C. Swift within my district.

JOHN C. AMES,
U. S. Marshal.
WM. E. CASS, *Deputy.*

36 I have served the within writ within my district in the following manner to-wit:

Upon the G. H. Hammond Company by reading the same to and within the presence and hearing of J. P. Lyman, president of said company, at the same time delivering to him personally a true copy thereof this 21st day of May, A. D. 1902.

Also upon the Hammond Packing Company by reading the same to and within the presence and hearing of J. P. Lyman, president of said company, at the same time delivering to him personally a true copy thereof, this 21st day of May, A. D. 1902.

Also upon J. P. Lyman, individually by reading the same to and within his presence and hearing, at the same time delivering to him personally a true copy thereof on May 21st A. D. 1902.

Also upon Frank E. Vogel, individually by reading the same to and within his presence and hearing, at the same time delivering to him personally a true copy thereof on May 21st, A. D. 1902.

JOHN C. AMES,
U. S. Marshal,
By G. M. WHERRITT, *Dep.*

(Endorsed:) Filed May 24, 1902 Marshall E. Sampsell, clerk.

37 And on to-wit: the 3rd day of July, 1902, came John S. Miller and entered his appearance as solicitor for the defendants in said cause in words and figures following to-wit:

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division. In Equity.

UNITED STATES OF AMERICA
vs.
SWIFT ET AL.
} No. 26291.

I hereby enter my appearance as solicitor for Swift and Company, The Cudahy Packing Company, The Hammond Packing Company, Armour & Company, The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzbergor Company, corporations; Nelson Morris, Edward Morris and Ira N. Morris, copartners under the name of Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, defendants in the above entitled case, at the July rule day, A. D. 1902.

JOHN S. MILLER.

(Endorsed:) Filed July 3, 1902, Marshall E. Sampsell, clerk.

38 And on to-wit: the fourth day of August, 1902, came Swift & Company, the Cudahy Packing Company, the Hammond Packing Company, the G. H. Hammond Company, Armour and Company, the Armour Company and Schwarzchild and Sulzberger, corporations by their solicitor Mr. John S. Miller and filed in the clerk's office of said court their certain joint and several demurrer in the words and figures following to-wit:

39 Form No. 134.

Demurrer in Chancery for Several Defendants.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY and Others. } In Chancery.

The joint and several demurrer of Swift and Company, The Cudahy Packing Company, The Hammond Packing Company, The G. H. Hammond Company, Armour and Company, The Armour Packing Company, and Schwartzchild and Sulzberger, corporations, defendants, to the bill of complaint of The United States of America, the above named complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill of complaint contained, to be true in such manner and form as the same are therein set forth and alleged, do demur to the said bill, and, for causes of demurrer, show that the said complainant hath not, in and by said bill, made or stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought, and prayed for, from or against these defendants, or any of them.

That said bill or petition is multifarious; and is for several and distinct matters and causes, in many or some of which these respective defendants or some of them are not interested or concerned; and is for several and distinct and independent matters and causes which have no relation to each other and which cannot be embraced in one suit.

To so much of said bill or petition as seeks discovery of the books, papers, accounts, letters, telegrams, records and documents of these respective defendants, these defendants respectively and severally do demur, and for cause thereof show that the said complainant or petitioner hath not in and by said bill or petition in that behalf made or stated such a case as doth or ought to entitle them to any such discovery.

To so much of said bill or petition as seeks that these respective defendants may answer or make any discovery of or as to any matter and cause of complaint therein alleged these defendants do respectively and severally demur, and for cause thereof respectively show that the said complainant or petitioner hath not in and by said bill or petition in that behalf made or stated such a case as doth or ought to entitle them to any such discovery.

To each of the following other parts of said bill or petition separately the said defendants in like manner demur, viz.; such parts

of said bill as are respectively alleged or contained in the third, sixth, seventh, eighth, ninth, tenth and eleventh paragraphs or divisions of said bill or petition respectively and as seeks that these respective defendants may answer or make any discovery with respect to the matter and cause therein respectively alleged, and as seeks any relief with respect thereto or for or on account thereof respectively from or against these respective defendants, or any or either of them, and as to each of said respective parts so demurred to, for causes of demurrer they respectively show each of the like grounds first herein above specified as to said bill, viz.;

Said complainant hath not in and by the said part of said bill so demurred to made or stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought from or against these defendants or any or either of them. And that said part of said bill so demurred to is multifarious and is for several and distinct matters and causes which have no relation to each other and in some of which these respective defendants or some of them are not interested or concerned.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and they pray the judgment of this honorable court, whether they, or either of them, shall be compelled to make any further or other answer to the said bill; and they humbly pray to be hence dismissed, with their reasonable costs and charges, in this behalf most wrongfully sustained.

JOHN S. MILLER,
Solicitor for Defendants.

40 STATE OF ILLINOIS, } ss:
County of Cook, }

Charles F. Langdon, D. Edwin Hartwell, Albert F. Borchert, and Jesse P. Lyman of said county being duly sworn say that they are respectively agents for said defendants in said within demurrer, each of which defendants is a corporation and each of said affiants being agent for one or more of said defendants, and that said within demurrer is not interposed for delay.

CHARLES F. LANGDON.
ALBERT F. BORCHERT.
D. EDWIN HARTWELL.
JESSE P. LYMAN.

Subscribed and sworn to before me, this 2nd day of August, 1902.

JOHN F. WAGNER,
[SEAL.] *Notary Public.*

I certify that in my opinion the foregoing demurrer is well founded in point of law.

JOHN S. MILLER,
Of Counsel for said Defendants.

(Endorsed:) Filed Aug. 4, 1902, Marshall E. Sampsell, clerk.

41 And on the same day to-wit: the fourth day of August, 1902, came Nelson Morris, Edward Morris, and Ira N. Morris, co-partners as Nelson Morris and Company J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, by their solicitor Mr. John S. Miller and filed in the clerk's office of said court their certain demurrer in words and figures following to-wit:

42 Form No. 134.

Demurrer in Chancery for Several Defendants.

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE UNITED STATES OF AMERICA *vs.* SWIFT AND COMPANY and Others. } In Chancery.

The joint and several demurrer of Nelson Morris, Edward Morris, and Ira N. Morris, copartners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger, and W. H. Noyes, defendants, to the bill of complaint of The United States of America, the above named complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill of complaint contained, to be true in such manner and form as the same are therein set forth and alleged, do demur to the said bill, and, for causes of demurrer, show that the said complainant hath not, in and by said bill, made or stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought, and prayed for, from or against these defendants, or any of them.

That said bill or petition is multifarious; and is for several and distinct matters and causes, in many or some of which these respective defendants or some of them are not interested or concerned; and

is for several and distinct and independent matters and causes which have no relation to each other and which cannot be embraced in one suit.

To so much of said bill or petition as seeks discovery of the books, papers, accounts, letters, telegrams, records and documents of these respective defendants, these defendants respectively and severally do demur, and for cause thereof show that the said complainant or petitioner hath not in and by said bill or petition in that behalf made or stated such a case as doth or ought to entitle them to any such discovery.

To so much of said bill or petition as seeks that these respective defendants may answer or make any discovery of or as to any matter and cause of complaint therein alleged these defendants do respectively and severally demur, and for cause thereof respectively show that the said complainant or petitioner hath not in and by said bill or petition in that behalf made or stated such a case as doth or ought to entitle them to any such discovery.

To each of the following other parts of said bill or petition separately the said defendants in like manner demur, viz.; such parts of said bill as are respectively alleged or contained in the third, sixth, seventh, eighth, ninth, tenth and eleventh paragraphs or divisions of said bill or petition respectively and as seeks that these respective defendants may answer or make any discovery with respect to the matter and cause therein respectively alleged, and as seeks any relief with respect thereto or for or on account thereof respectively from or against these respective defendants, or any or either of them, and as to each of said respective parts so demurred to, for causes of demurrer they respectively show each of the like grounds first herein above specified as to said bill, viz.;

Said complainant hath not in and by the said part of said bill so demurred to made or stated such a case as doth or ought to entitle them to any such discovery or relief as is thereby sought from or against these defendants or any or either of them. And that said part of said bill so demurred to is multifarious and is for several and distinct matters and causes which have no relation to each other and in some of which these respective defendants or some of them are not interested or concerned.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and they pray the judgment of this honorable court, whether they, or either of them, shall be compelled to make any further or other answer to the said bill; and they humbly pray to be hence dismissed, with their reasonable costs and charges, in this behalf most wrongfully sustained.

JOHN S. MILLER,
Solicitor for Defendants.

43 STATE OF ILLINOIS, } ss:
Cook County, }

Charles F. Langdon, D. Edwin Hartwell, Albert F. Borchert, and Jesse P. Lyman, of said county being duly sworn say that they are respectively four of the defendants in the within demurrer and make this affidavit on behalf of themselves and of each of said other defendants in said demurrer and that said within demurrer is not interposed for delay.

CHARLES F. LANGDON.
ALBERT F. BORCHERT.
D. EDWIN HARTWELL.
JESSE P. LYMAN.

Subscribed and sworn to before me, this 2nd day of August, 1902.

[SEAL] JOHN F. WAGNER,
Notary Public.

I certify that in my opinion the foregoing demurrer is well founded in point of law.

JOHN S. MILLER,
Of Counsel for said Defendant.

(Endorsed:) Filed August 4, 1902. Marshall E. Sampsell, clerk.

44 And on to-wit: the sixteenth day of December, being one of the days of the regular December term of said court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, circuit judge, appears the following entry to-wit:

Order of December 16, 1902.

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, a Corporation, ET AL. } 26291.

Now come the parties by their solicitors, the United States being represented by Mr. S. H. Bethea, district attorney and by Mr. William A. Day, the defendants being represented by Mr. John S. Miller.

And now comes on for argument the demurrers to the bill of complaint herein, and the court having heard the arguments of counsel to conclusion and not being sufficiently advised in the premises, takes time to consider, counsel being ruled to file briefs herein within two weeks; the restraining order herein to stand and remain in full force and effect until the court shall otherwise order and direct.

45 And on to-wit: the eighteenth day of February, 1903, there was filed in the clerk's office of said court in said entitled cause a certain opinion by Judge Grosscup, in the words and figures following to-wit:

46 *Opinion.*

In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

THE UNITED STATES OF AMERICA
v.
SWIFT & COMPANY ET AL.

The defendants are seven corporations, one copartnership, and twenty-three other persons, and the petition is fairly summarized as follows:

1st. "That at the time of its filing they had been and then were engaged in the business of buying live stock at divers points throughout the United States where stockyards existed, and slaughtering the same at such places in different States and converting the same into fresh meats for human consumption.

2nd. "That they had been and then were engaged in the business of selling such fresh meats at the places where prepared, to dealers and consumers in divers other States and Territories of the United States and in foreign countries, and shipping the same when so sold, from said places of preparation to such dealers and consumers, pursuant to such sales, and were thus engaged in trade and commerce among the several States and Territories and with foreign nations.

3rd. "That they had been and then were engaged in the business of shipping such fresh meats from said points where so prepared, by common carriers to the respective agents of the defendants located at and near the principal markets of such meats in other States and Territories and in foreign countries for sale by those agents in those markets to dealers and consumers, which they there sold through their agents and were thus engaged in trade and commerce among the several States and Territories and with foreign nations.

4th. "That of the total volume of trade and commerce among the said States and Territories in fresh meats the said defendants together controlled about sixty per cent.

5th. "That as to such trade and commerce among the several States and Territories and foreign nations in fresh meats, the said defendants should, and but for the acts hereinafter complained of would be and remain in competition with each other.

6th. "That said defendants, in violation of the act of Congress of July 2, 1890, and in order to restrain competition among themselves as to the purchase of livestock necessary to the production of the meats produced by them, have engaged in, and intend to continue

an unlawful combination and conspiracy between themselves for directing and requiring their respective purchasing agents at the said several stockyards and markets where they customarily purchase such livestock, which livestock is produced and owned principally in other States and Territories of the United States, and shipped by the owners thereof to such stockyards for competitive sale, to refrain from bidding against each other when making purchases of such livestock, and by these means inducing and compelling the owners of such livestock to sell the same at less prices than they would receive if such bidding were competitive; which combination and conspiracy is in restraint of trade and commerce among the several States, etc.

7th. "That said defendants, in further violation of said act, and in order to further restrain competition among themselves, which would otherwise exist, as to the purchase of livestock necessary to the production of the meats produced by them, have engaged in and intend to continue an unlawful combination and conspiracy among themselves for bidding up through their agents the prices of livestock for a few days at said stockyards, thereby inducing shippers from other States and Territories to make large shipments of such livestock to such stockyards, and then refrain from bidding up such livestock, and thereby obtaining such livestock at prices much less than it would bring in the regular way of trade.

8th. "That said defendants, in further violation of said act, and in order to restrain and destroy competition among themselves as to such trade and commerce and to monopolize the same, have engaged in and intend to continue an unlawful combination and conspiracy to arbitrarily, from time to time, lower and fix prices, and maintain uniform prices at which they will sell, directly or through their respective agents, such fresh meats to dealers and consumers throughout said States and Territories and foreign countries. That the arbitrary raising, lowering, fixing, and maintaining of said prices is effected through the action of divers of their agents in secretely holding periodical meetings, and there agreeing upon the prices to be adopted by said defendants respectively in such trade and commerce, which said prices are notified by letters and telegrams, and are adhered to in their sales, which are made directly, and among other ways; and by collusively restricting and curtailing the quantities of such meats shipped by them in pursuance of such combination, and imposing against each other divers penalties for any deviations from such prices, and establishing a uniform rule for the giving of credit to dealers throughout the said States and Territories and foreign countries, and for the conduct of the business of such dealers, with penalties for violations thereof, by notifying each other of the delinquencies of said dealers, and keeping what is commonly known as a "black list" of such delinquents, and refusing to sell meats to any of such delinquent dealers.

9th. "And the said defendants, in violation of the provisions of the said act, have engaged in and intend to continue an unlawful

combination and conspiracy, to direct and require their respective agents at and near many of the markets for such fresh meats throughout the United States and Territories to arbitrarily make and impose uniform charges for cartage for delivery, upon making such sales to dealers and consumers in those markets of the meats shipped to them through said agents by the said defendants respectively from their several points of preparation, thereby increasing the charges for such meats to said dealers and consumers.

10th. "That notwithstanding the common carriers by railroad subject to the provisions of the laws of the United States for the regulation of commerce, have established and published their schedule of rates, fares and charges for the transportation of live-stock, and for the transportation of meats, which are the only lawful rates for such transportation, the said defendants, intending thereby to monopolize the commerce aforesaid, and prevent competition therein, have made and are making agreements and arrangements with divers officers and agents of such common carriers whereby the said defendants were to receive, and will continue to receive, by means of rebates and other devices, unlawful rates for such transportation, less than the lawful rates, which rebates they divide, among themselves, and will continue to do so unless restrained by the injunction of this court, which is a scheme to monopolize,
47 and also a combination and conspiracy in restraint of trade and commerce among the several States and Territories and with foreign nations.

11th. "That the said defendants now are, and for years past have been in combination and conspiracy with each other and with the railroad companies and others to complainant unknown, to obtain a monopoly of the supply and distribution of fresh meats throughout the United States and its Territories and foreign countries, to that end the defendants do and will artificially restrain such commerce and put in force abnormal, unreasonable and arbitrary regulations for the conduct of their own and each other's business, effecting the same from the shipment of the livestock from the plains to the final distribution of the meats to the consumer. All to the injury of the people and in defiance of law."

To this petition five of the defendant corporations have filed joint and several demurrers, the grounds of which are as follows:

"The bill of complaint does not allege any contract, combination or conspiracy in restraint of interstate or foreign trade or commerce within the meaning of said act of Congress of July 2, 1890.

"The bill of complaint does not allege any acts of defendants monopolizing, or attempting to monopolize, or combining or conspiring to monopolize any part of such trade or commerce within the meaning of said act.

"If the act of Congress in question should be given a construction which would sustain this bill of complaint, such act would violate the provisions of the Constitution of the United States.

"Said bill is multifarious.

"There is a misjoinder of causes of action and of persons in said bill, as alleged in said demurrers.

"The said bill of complaint and the allegations and charges therein are not sufficiently definite or specific, but are too general and indefinite."

The hearing is on these demurrers.

After the foregoing statement of facts, GROSSCUP, circuit judge, delivered the opinion:

Commerce, briefly stated, is the sale or exchange of commodities. But that which the law looks upon as the body of commerce is not restricted to specific acts of sale or exchange. It includes the intercourse—all the initiatory and intervening acts, instrumentalities and dealings—that directly bring about the sale or exchange. Thus, though sale or exchange is a commercial act, so also is the solicitation of the drummer, whose occupation it is to bring about the sale or exchange. (Brennan *v.* Titusville, 153 U. S. 289.) The whole transaction from initiation to culmination is commerce.

When commerce, thus broadly defined, is between parties dealing from different States—to be effected so far as the immediate act of exchange goes by transportation from State to State it is "commerce between the States," within the meaning of the Constitution, and the statute known as the Sherman act. But it is not the transportation that makes the transaction interstate commerce. That is an adjunct only, essential to commerce, but not the test. The underlying test is that the transaction, as an entirety, including each part calculated to bring about the result, reaches into two or more States; and that the parties dealing with reference thereto deal from different States.

An interstate commercial transaction is, in this sense, an affair rising from different States, and centering in the act of exchange, each essential part of the affair being as much commerce as is the center. With this definition in mind, let us see what the transaction made out in the petition is.

For the purpose of clear exposition, the facts set forth in the petition should be separated into two groups: Those that are intended to bring the transaction within the body of interstate commerce; and those that are intended to fix upon such transaction the character of unlawful combination and conspiracy. Shorn of verbiage, and of immaterial accessories, the first group may be stated as follows: The defendants, controlling sixty per cent. of the trade and commerce in fresh meats in the United States, buy, in the course of their business, livestock shipped from points throughout the United States; which, having been converted into fresh meats, is sold again by them at the places where prepared, to dealers and consumers in other States; or is sold through their agents; located in other States, to dealers and consumers in the States where the agents, are located. The shipment in the first class of sales is made directly from the places where the meat is prepared to the dealers and consumers in

other States, and in the latter class to the agents in the other States who, upon sale, deliver directly to the dealer and consumer.

What may be called the body of these transactions is two-fold. It reaches backward to the purchase of cattle that come to defendants from States other than those in which defendants manufacture; and it reaches forward to the sale of the meats, after conversion, to parties dealing with respect thereto from other States, followed by shipments into the other States. Each of these transactions constitute, in my judgment, interstate commerce. The purchase of cattle shipped habitually from other States to the markets where defendants purchase, in the expectation that the purchase will be made by the slaughter companies, is an act of interstate commerce. Hopkins' case, 171 United States, 590. It is none the less so, merely because the local incidents or facilities for such purchase are to be regarded as outside the interstate character of the transaction.

Thus the local commission broker, or the men who drive the cattle from the pens to the slaughter house, need not, in any survey of the transaction, be held to be within the interstate status of the transaction. With them, it is essentially the same whether the cattle come from the State in which the purchase is made, or from other States. They are aids or facilities only, and as such are merely local incidents. But the purchase of livestock thus brought habitually from other States, relates in its larger bearings, to a transaction that had its beginnings in other States. The original shipments are influenced and to a large extent brought about, by the character of the purchase.

The purchase, the shipments, and the transportation, are commercially interdependent; and in any survey of the transaction, as an entirety, none could be omitted. They each go to make the transaction, and covering different States, they stamp the transaction—not all its incidents, but its essential body—as a transaction in interstate commerce.

Coming to the other branch of the transaction—the sales by the defendants—a like result follows. Unquestionably it is interstate commerce when purchasers from other States buy directly from the defendants, and have the meats shipped to them by the vendors. The *situs* of such a transaction, both as to initiatory intercourse, and as to transportation in furtherance of the exchange, includes a State other than the one from which defendants deal.

I think the same is true of meat sent to agents, and sold from their stores. The transaction in such case, in reality, is between the purchaser and the agents' principal. The agents represent the principal at the place where the exchange takes place but the transaction, as a commercial entity, includes the principal, and includes him as dealing from his place of business. Indeed such privity exists between the principal and the transaction, that he could, at the instant as a citizen of another State, sue upon the transaction in the Federal courts; nor have I any question that if the conditions of this case were reversed, so that defendants were invoking the shelter, instead

of seeking to escape the obligations of the commerce clause, Federal law would be found equal to the protection asked.

I need not dwell on the contention of defendants that the fresh meats in the hands of the agents are subject to ordinary State taxation, or upon the cases cited in this connection. It is enough to say that because a thing can be taxed by the State, it does not follow that it lies outside the body of interstate commerce; for commerce, interstate as well as domestic, is subject to the police and taxing power of the State, so long as the exercise of such power does not interfere with the National Government's exclusive right of regulation. Addleston Pipe & Steel Company *v.* United States, 175 U. S. 25; Austin *v.* Tennessee, 179 U. S. 349; Prentice and Egan on the Commerce Clause of the Constitution, page 27. Nor shall I differentiate the Knight case, the Hopkins case and other cases urged upon me as applicable to the case under consideration. A study of these cases will show that they are not in conflict with the views already expressed.

The next inquiry is this: Do the facts set forth in the second grouping, fix upon the transaction, even though the transactions be within the body of interstate commerce, the character of unlawful combination. The averments of the petition in this respect may be summarised as follows:

That the defendants are engaged in an unlawful combination and conspiracy under the Sherman act in (*a*) directing and requiring their purchasing agents at the markets where the livestock was customarily purchased, to refrain from bidding against each other when making such purchases; (*b*) in bidding up through their agents, the prices of livestock for a few days at a time, to induce large shipments, and then ceasing from bids, to obtain the livestock thus shipped at prices much less than it would bring in the regular way; (*c*) in agreeing at meetings between them upon prices to be adopted by all, and restriction upon the quantities of meat shipped; (*d*) in directing and requiring their agents throughout the United States to impose uniform charges for cartage for delivery, thereby increasing to dealers and consumers the charges for such meats; and (*e*) in making agreements with the transportation companies for rebates and other discriminative rates.

No one can doubt that these averments state a case of combination. Whether the combination be unlawful or not, depends on whether it is in restraint of trade. The general meaning of that term is no longer open to inquiry. It has been passed upon carefully by the Supreme Court in the Freight Association case, 166 United States 290, and in the Traffic case, 171 United States 558, where the whole subject was a year later elaborately re-argued. I will not extend into this opinion even a summary of these cases. It is clear from them that restraint of trade is not dependent upon any consideration of reasonableness or unreasonableness in the combination averred; nor is it to be tested by the prices that result from the combination. Indeed, combination that leads directly to

lower prices to the consumer may, within the doctrine of these cases, even as against the consumer, be restraint of trade; and combination that leads directly to higher prices, may, as against the producer be restraint of trade. The statute thus interpreted, has no concern with prices, but looks solely to competition, and to the giving of competition full play, by making illegal any effort at restriction upon competition. Whatever combination has the direct and necessary effect of restricting competition, is, within the meaning of the Sherman act as now interpreted, restraint of trade.

Thus defined, there can be no doubt that the agreement of the defendants to refrain from bidding against each other in the purchase of cattle, is combination in restraint of trade; so also their agreement to bid up prices to stimulate shipments, intending to cease from bidding when the shipments have arrived. The same result follows when we turn to the combination of defendants to fix prices upon, and restrict the quantities of meat shipped to their agents or their customers. Such agreements can be nothing less than restriction upon competition, and, therefore, combination in restraint of trade; and thus viewed, the petition, as an entirety, makes out a case under the Sherman act.

The demurrer challenges the petition for multifariousness and misjoinder of parties; and challenges each paragraph of the petition, standing separately, as insufficient to constitute a case under the Sherman act. But the paragraphs can not properly be looked upon as separate causes of action. They relate clearly to each other, thus constituting a whole that is the sum of the parts; and thus regarded, are free from the objections indicated.

It may be true that the way of enforcing any decree under this petition is beset with difficulties, and that a literal enforcement may result in vexatious interference with defendant's affairs. But in the inquiry before me, I am not at liberty to stop before such considerations. The Sherman act, as interpreted by the Supreme Court, is the law of the land, and to the law as it stands both court and people must yield obedience.

The demurrer is overruled, and the motion for preliminary injunction granted.

(Endorsed:) Filed Feb. 18, 1903 Marshall E. Sampsell clerk

48 And on to-wit: the fourth day of April, 1903, in the December term of said court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup circuit judge, appears the following entry to-wit:

Order of April 4, 1903.

UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, The Hammond Packing Company, Armour and Company, The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Corporations, and Nelson Morris, Edward Morris, and Ira N. Morris, Co-partners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, Edward C. Swift, Ferdinand Sulzberger, and W. H. Noyes. } 26291.

This cause coming on to be heard upon the demurrers of Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, the G. H. Hammond Company, Armour and Company, the Armour Packing Company and Schwartzchild and Sulzberger, corporations and Nelson Morris, Edward Morris, and Ira N. Morris, co-partners as Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker,
Thomas J. Conners, Charles F. Langden, Michael Cudahy,
49 Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, to the bill of complaint, after argument by counsel the court being fully advised in the premises, the demurrers are overruled.

Thereupon the cause came on upon the motion of complainant for a preliminary injunction as prayed in the bill; and the court having heard arguments of counsel and being fully advised in the premises, doth order that a preliminary injunction issue restraining, until the final hearing or the further order of this court, the said defendants, Swift and Company, The Cudahy Packing Company, The Hammond Packing Company, Armour and Company, The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations and Nelson Morris, Edward Morris and Ira N. Morris, co-partners as Nelson Morris and Company, J. Ogden Armour Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Bor-

chert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russel, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, and each of them, their respective agents and attorneys, and all other persons acting or claiming so to act, from entering into, taking part in, or performing any contract, combination, or conspiracy, the purpose or effect of which will be, as to trade and commerce in fresh meats between the several States and Territories and the District of
50 Columbia, a restraint of trade, either by directing, or requiring their respective agents to refrain from bidding against each other in the purchase of live stock; or collusively and by agreement to refrain from bidding against each other at the sales of live stock; or by combination, conspiracy or contract, raising or lowering prices, or fixing uniform prices at which said meats will be sold either directly or through their respective agents, or by curtailing the quantity of such meats shipped to such markets and agents; or by establishing and maintaining rules for the giving of credit to dealers in such meats, the effect of which rules will be to restrict competition; or by imposing uniform charges for cartage and delivery of such meats to dealers and consumers, the effect of which will be to restrict competition; or by any other method or device, the purpose and effect of which is to restrain trade and commerce as aforesaid. But nothing herein shall be construed to prohibit the said defendants from agreeing upon charges for cartage and delivery, and other incidents connected with local sales, where such charges are not calculated to have any effect upon competition in the sale and delivery of meats; nor from establishing and maintaining rules for the giving of credit to dealers, where such rules in good faith are calculated solely to protect defendants against dishonest or irresponsible dealers; nor from curtailing the quantity of meats shipped to a given market, where the purpose of such arrangement in good faith is to prevent the over accumulation of meats as perishable articles in such markets.

The said defendants are hereby restrained also, from violating the provisions of an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful re-
51 straints and monopolies," by combining or conspiring together, or with each other and others, to monopolize or attempt to monopolize any part of the trade and commerce in fresh meats among the several States and Territories and the District of Columbia, by demanding, obtaining or, with or without the connivance of the officers or agents thereof, or of any of them, receiving from the railroad companies or orther common carriers transporting such fresh meats in such trade and commerce, either directly or by means of rebates, or by any other device, transportation of or for such meats, from the points of the preparation and production of the same from live stock or elsewhere, to the markets for the sale of the same to dealers and consumers in other States and Territories, than those

wherein the same are so prepared, or the District of Columbia, at less than the regular rates which may be established or in force, on their several lines of transportation, under the provisions in that behalf of the laws of the United States for the regulation of commerce.

But nothing herein contained shall be construed to restrain or interfere with the action of any single company or firm by its or their officers or agents (whether such officers or agents are themselves personally made parties defendant hereto or not) acting with respect to its or their own corporate or firm business, property or affairs.

It is further ordered that the defendants answer said bill on or before the 21st day of April A. D. 1903.

52 And on to-wit: the twenty second day of April, 1903, being one of the days of the regular December term of said court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, circuit judge, appears the following entry to-wit:

Order of April 22, 1903.

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, The Hammond Packing Company, and Armour and Company, Corporations under the Laws of Illinois; The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Corporations under the Laws of New Jersey, Michigan, and New York, Respectively; Nelson Morris, Edward Morris, and Ira N. Morris, Co-partners under the Name of Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Gustavus F. Swift, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, Citizens of Illinois; Edward C. Swift, a Citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, Citizens of New York. } 26291.

The appearance of the above named defendants having been heretofore duly entered, and demurrers in their behalf to the peti-
53 tion herein having been filed and, after a full hearing thereon, overruled by the court, and the court having thereupon ordered the said defendants to answer the said petition on or before the twenty-first day of April, 1903, and the said defendants having failed to comply with the said order and to file their answer in accordance therewith, and having elected to stand by their respective demurrers;

Now therefore, on motion of S. H. Bethea, United States attorney for this district, it is ordered that the default of the said defendants and each of them be entered herein, in accordance with the rules in such case made and provided.

54 And on to-wit: the 26th day of May, 1903, in the December term of said court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, circuit judge, appears the following entry to-wit:

Order of May 26, 1903.

UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, *et al.* } 26291.

Now comes S. H. Bethea, United States district attorney and suggests the death of Gustavus F. Swift, one of the defendants in the above entitled cause.

55 And on to-wit: the twenty-sixth day of May, 1903, being one of the days of the regular December term of said court, 1902, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, circuit judge, appears the following entry to-wit:

Decree of May 26, 1903.

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, The Hammond Packing Company, and Armour and Company, Corporations under the Laws of Illinois; The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Corporations under the Laws of New Jersey, Michigan, and New York, Respectively; Nelson Morris, Edward Morris, and Ira N. Morris, Co-partners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, Citizens of Illinois; Edward C. Swift, a Citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, Citizens of the State of New York. } 26291.

This cause came on to be heard upon the demurrers of the defendants, and the court, being fully advised in the premises,

56 overruled the same, and ordered the defendants to answer the petition herein on or before the twenty-first day of April, 1903, whereupon on the twenty-second day of April, 1903, the defendants having elected to stand by their demurrers, and having failed to file their answer to the petition, the default of the defendants and each of them was entered herein upon motion of S. H. Bethea, United States attorney:

And now, upon motion of the said attorney, the court doth order that the preliminary injunction heretofore awarded in this cause, to restrain the said defendants and each of them, their respective agents and attorneys, and all other persons acting in their behalf, or in behalf of either of them, or claiming so to act, from entering into, taking part in, or performing any contract, combination or conspiracy, the purpose or effect of which will be, as to trade and commerce in fresh meats between the several States and Territories and the District of Columbia, a restraint of trade, in violation of the provisions of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," either by directing or requiring their respective agents to refrain from bidding against each other in the purchase of live stock; or collusively and by agreement to refrain from bidding against each other at the sales of live stock; or by combination, conspiracy or contract raising or lowering prices or fixing uniform prices at which the said meats will be sold, either directly or through their respective agents; or by curtailing the quantity of such meats shipped to such markets and agents; or by establishing and maintaining rules for the giving of credit to dealers in such meats, the
57 effect of which rules will be to restrict competition; or by imposing uniform charges for cartage and delivery of such meats to dealers and consumers, the effect of which will be to restrict competition; or by any other method or device, the purpose and effect of which is to restrain commerce as aforesaid; and also from violating the provisions of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," by combining or conspiring together, or with each other and others, to monopolize or attempt to monopolize any part of the trade and commerce in fresh meats among the several States and Territories and the District of Columbia, by demanding, obtaining, or, with or without the connivance of the officers or agents thereof, or of any of them, receiving from railroad companies or other common carriers transporting such fresh meats in such trade and commerce, either directly or by means of rebates, or by any other device, transportation of or for such meats, from the points of the preparation and production of the same from live stock or elsewhere, to the markets for the sale of the same to dealers and consumers in other States and Territories than those wherein the same are so prepared, or the District of Columbia, at less than the regular rates which may be established or in force on their several lines of

transportation, under the provisions in that behalf of the laws of the said United States for the regulation of commerce, be and the same is hereby made perpetual.

But nothing herein shall be construed to prohibit the said defendants from agreeing upon charges for cartage and delivery, and other incidents connected with local sales, where such charges are
58 not calculated to have any effect upon competition in the sales and delivery of meats; nor from establishing and maintaining rules for the giving of credit to dealers where such rules in good faith are calculated solely to protect the defendants against dishonest or irresponsible dealers, nor from curtailing the quantity of meats shipped to a given market where the purpose of such arrangement in good faith is to prevent the over-accumulation of meats as perishable articles in such markets.

Nor shall anything herein contained be construed to restrain or interfere with the action of any single company or firm, by its or their officers or agents (whether such officers or agents are themselves personally made parties defendant hereto or not) acting with respect to its or their own corporate or firm business, property or affairs.

59 And on to-wit: the 18th day of July, 1903, came the defendants in said entitled cause by their solicitor Mr. John S. Miller and filed in the clerk's office of said court their certain petition for appeal in words and figures following to-wit:

Petition for Appeal.

In the Circuit Court of the United States in and for the Northern District of Illinois, Northern Division.

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, The Hammond Packing Company, and Armour and Company, Corporations under the Laws of Illinois; The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Corporations under the Laws of New Jersey, Michigan, and New York, Respectively; Nelson Morris, Edward Morris, and Ira N. Morris, Co-partners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, Citizens of Illinois; Edward C. Swift, a Citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, Citizens of the State of New York. } No. 26291.

Come now the above named defendants, Swift and Company, The Cudahy Packing Company, The Hammond Packing Company, and Armour and Company, corporations under the laws of Illinois; The Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations under the laws of New Jersey, Michigan and New York respectively; Nelson Morris, Edward Morris, and Ira N. Morris, co-partners as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine,
60 Calvin M. Favorite, Arthur Meeker, Thomas J. Connors, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, citizens of Illinois; Edward C. Swift, a citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, citizens of the State of New York, and conceiving themselves to be aggrieved by the order and decree of this court made and entered in the above entitled cause on the 26th day of May, 1903, wherein and whereby (among other things) said bill was sustained and it was ordered, adjudged and decreed that the demurrer of these defendants to the complainant's

bill of complaint be overruled and that the preliminary injunction awarded in this case, to restrain the said defendants and each of them, and all persons acting in their behalf, or in behalf of either of them, from entering into, taking part in, or performing any contract, combination, or conspiracy, the purpose or effect of which will be, as to trade and commerce in fresh meats between the several States and Territories and the District of Columbia, a restraint of trade in violation of the provisions of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," either by directing or requiring their respective agents to refrain from bidding against each other in the purchase of live stock; or collusively and by agreement to refrain
61 from bidding against each other at the sales of live stock; or by combination, conspiracy or contract raise or lower prices or fix uniform prices at which meats shall be sold, either directly or through their respective agents; or by curtailing the quantity of such meats shipped to such markets and agents; or by establishing and maintaining rules for the giving of credit to dealers in such meats, the effect of which rules will be to restrict competition; or by imposing uniform charges for cartage and delivery of such meats to dealers and consumers, the effect of which will be to restrict competition; or by any other method or device, the purpose and effect of which is to restrain commerce as aforesaid; and also from violating the provision of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," by combining or conspiring together, or with each other and others, to monopolize or attempt to monopolize any part of the trade and commerce in fresh meats among the several States and Territories and the District of Columbia, by demanding, obtaining, or, with or without the connivance of the officers or agents thereof, or of any of them, receiving from railroad companies or other common carriers transporting such fresh meats in such trade and commerce, either directly or by means of rebates, or by any other device, transportation of or for such meats, from the points of the preparation and production of the same from live stock, or elsewhere, to the markets for the sale of the same to dealers and consumers in other States and Territories than those wherein the
61½ same are so prepared, or the District of Columbia, at less than the regular rates which may be established or in force on their several lines of transportation, under the provisions in that behalf of the laws of the said United States for the regulation of commerce, be sustained and be and the same was made perpetual, does hereby appeal from the said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors herewith filed herein, and they pray that this appeal may be allowed and that a transcript of the record, papers and proceedings upon which the said order and decree was made, duly

authenticated, may be sent to the Supreme Court of the United States.

JOHN S. MILLER,
Solicitors for said Defendants.

(Endorsed:) Filed July 18, 1903. Marshall E. Sampsell, clerk.

And on the same day to-wit: the 18th day of July, 1903, came the defendants in said entitled cause by their solicitor and filed in the clerk's office of said court their certain assignment of errors in words and figures following to-wit:

62 UNITED STATES OF AMERICA, *Northern District of Illinois, Northern Division,* } *ss:*

In the Circuit Court of the United States in and for the Northern Division of the Northern District of Illinois.

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, The Hammond Packing Company, Armour and Company, The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company; Nelson Morris, Edward Morris, and Ira N. Morris, Copartners, as Nelson Morris and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger, and W. H. Noyes. } No. 26291.

Assignment of Errors on Appeal to the Supreme Court of the United States.

And now come the said defendants, respectively, by John S. Miller, their solicitor, and with their petition for the allowance of an appeal herein to the Supreme Court of the United States
63 present and file this, their assignment of errors, upon which they will, respectively, rely upon their appeal from the decree of this honorable court rendered and entered herein on the twenty-sixth day of May, 1903, to the said Supreme Court, and in that behalf they, respectively, jointly and severally say that in the said record and proceedings and in the entry of the said decree there is manifest error, in this, to wit:

1. The circuit court erred in overruling and in not sustaining the general demurrers of these defendants, respectively, to the said bill of complaint or petition of the United States.

2. The circuit court erred in not holding and ruling that the said bill of complaint or petition does not allege any contract, combination or conspiracy in restraint of interstate or foreign trade or commerce, within the meaning of said act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890; and in not sustaining the said respective demurrers on that ground.

3. The circuit court erred in not holding and ruling that said bill of complaint does not allege any acts of defendants monopolizing or attempting to monopolize, or combining or conspiring to monopolize any part of said trade or commerce, within the meaning of said act; and in not sustaining said respective demurrers to said bill or petition on that ground.

64 4. The circuit court erred in not holding and ruling that if the said act of Congress of July 2, 1890, has and is to be given a construction which would make the said supposed acts of the said defendants in the said bill or petition alleged, a violation thereof, for which the said defendants would be subject to the penalties, injunctions or processes by said act prescribed, the said act would and does violate the provisions of the Constitution of the United States; and in not sustaining the said respective demurrers on that ground.

5. The circuit court erred in not holding and ruling that there is in said bill or petition a misjoinder of causes of action and of persons, as alleged in the said demurrers; and in not sustaining the said respective demurrers on that ground.

6. The circuit court erred in not holding and ruling that the said bill of complaint and the allegations and charges therein are not sufficiently definite or specific, but are too general and indefinite to call for or require any answer from the said respective defendants; and in not sustaining the said respective demurrers to said bill or petition upon that ground.

7. The said circuit court did not have jurisdiction to enter the said decree nor to award the said injunction against these defendants.

65 8. The circuit court erred in not holding and ruling that said bill or petition was multifarious, and in not sustaining the respective demurrers of these defendants thereto upon that ground.

9. The circuit court erred in not holding and ruling that said bill or petition was for several and distinct matters and causes, in many or some of which these respective defendants, or some of them, are not interested or concerned; and in not sustaining the demurrers thereto upon that ground.

10. The circuit court erred in not holding and ruling that the respective matters and causes in the sixth paragraph of said bill or

petition, and the matters and causes in the said seventh paragraph of said bill or petition, and the respective matters and causes in the said eighth paragraph of said bill or petition, and the respective matters and causes in the said ninth paragraph of said bill or petition, and the said respective matters and causes in the said tenth paragraph of said bill or petition, and the said matters and causes in the said eleventh paragraph of said bill or petition, were distinct and different and independent and unconnected matters and causes, and not the same matters or causes, and that the same were improperly joined in the said bill or petition; and in not sustaining the said respective demurrers upon that ground.

66 11. The circuit court erred in not holding that the supposed unlawful combination and conspiracy between the said defendants for directing and requiring their respective purchasing agents at the said several stock yards and markets to refrain from bidding against each other except perfunctorily and without good faith, in said sixth paragraph of said bill or petition charged, and the supposed unlawful combination and conspiracy among themselves for bidding up, through their respective purchasing agents, the prices of live stock for a few days at said stock yards and markets, in said seventh paragraph of said bill or petition charged, and the said supposed unlawful combination and conspiracy to raise, lower and fix prices and to maintain uniform prices at which they will sell fresh meats to dealers and consumers throughout the States and Territories of the United States and the District of Columbia and foreign countries, in the said eighth paragraph of said bill or petition charged, and the said supposed unlawful combination and conspiracy to direct and require their respective agents at and near many of the markets for such fresh meats throughout the said States and Territories and the District of Columbia to arbitrarily make and impose uniform charges for cartage for the delivery, upon making sales to dealers and consumers in those markets, of the meats shipped to them through the said agents by the said defendants, respectively, from their several points of preparation of the same, in the said ninth paragraph of said bill or petition charged, and the said supposed engaging in and continuing of arrangements and agreements with divers officers and agents of common carriers, in the said tenth paragraph

67 of said bill or petition charged, whereby it is therein charged said defendants were to receive and have received and will continue to receive unlawful rates for transportation of livestock and meats, and the said supposed combination and conspiracy of said defendants with each other and with the railroad companies and others to complainant unknown, to obtain a monopoly of the supply and distribution of fresh meats throughout the United States and its Territories, and shipments thereof to foreign countries, in the said eleventh paragraph of said bill or petition charged,—are, respectively, distinct and different and unconnected and independent supposed combinations, conspiracies, matters and causes, and that the same

are improperly joined in the said bill; and in not sustaining said respective demurrers to said bill or petition on that ground.

12. That said circuit court erred in not sustaining the said respective demurrers to so much of the said bill or petition as seeks discovery of the books, papers, accounts, letters, telegrams, records and documents of said respective defendants, and in overruling the said respective demurrers. And the court erred in not holding and ruling that the said prayer and portion of said petition last mentioned, seeking discovery as aforesaid, does not contain any showing of probable cause, supported by oath or affirmation, as required by the fourth amendment to the Constitution of the United States, or otherwise comply with said fourth amendment, but violates and if allowed would violate the provisions of the fourth amendment
68 to the Constitution of the United States, and would violate the provisions of the fifth amendment to the Constitution of the United States.

13. The said circuit court erred in not sustaining the said respective demurrers to so much of the said bill or petition as seeks that these respective defendants may answer or make any discovery of or as to any matter or cause of complaint therein alleged, and in overruling the same. And the court erred in not holding and ruling that the said prayer and portion of said petition last mentioned, seeking answer or discovery as aforesaid, does not contain any showing of probable cause, supported by oath or affirmation, as required by the fourth amendment to the Constitution of the United States, or otherwise comply with said fourth amendment, but violates and if allowed would violate the provisions of the fourth amendment to the Constitution of the United States, and would violate the provisions of the fifth amendment to the Constitution of the United States.

14. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the sixth paragraph thereof and as alleges that said defendants have engaged in and intend to continue in an unlawful combination and conspiracy between themselves for directing and requiring their respective purchasing agents at the said several stock yards and markets where
69 they customarily purchase livestock necessary to the production of meats produced by them, and in said paragraph sixth mentioned, to refrain from bidding against each other except perfunctorily and without good faith, when making purchases of such livestock on behalf of the said defendants, respectively, and by that means inducing and compelling such owners of such livestock to part with the same at prices less than they would receive at such stock yards and markets if such bidding were competitive as between said purchasing agents, and that defendants have caused and are causing their agents to refrain from bidding accordingly and have induced and are inducing each other and will, unless restrained by said court, continue, in pursuance of such supposed conspiracy,

to induce each other to refrain from bidding as aforesaid, which said supposed combination and conspiracy is there alleged to be one in restraint of trade and commerce among the several States and Territories of the said United States and the District of Columbia and with foreign countries.

And the said defendants and appellants respectively say that the said circuit court erred in not holding and ruling that the said paragraph sixth does not allege any acts or facts to constitute the violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," but was and is too general and indefinite to require answer from the said respective defendants; and in not holding and
70 ruling that the said sixth paragraph does not allege any contract, combination or conspiracy on the part of the respective defendants, in restraint of interstate or foreign trade or commerce, within the meaning of said act; and does not allege any monopolizing or attempting to monopolize, or any combination or conspiring to monopolize any part of *of* interstate or foreign trade or commerce by the said defendants, within the meaning of said act. And in not holding and ruling that the supposed contracts or acts alleged and complained of in said sixth paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

15. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the seventh paragraph thereof and as alleges that said defendants have engaged in and intend to continue and unlawful combination and conspiracy among themselves for bidding up, through their respective purchasing agents, the prices of live stock for a few days at a time at the said stock yards and markets, so that the market reports will show prices much higher than the state of the trade will warrant, and thereby inducing owners of such lifestock in divers other of the said States and Territories to simultaneously make large shipments of such livestock from such other States and Territories to said stock yards and open markets, instead of shipping the same to more natural and advantageous markets and at more natural and advantageous times in the due and proper course of such trade and business, and by
71 this means and by reason of the resulting large offerings there of such livestock (and by thereupon refraining from bidding against each other for the same), obtaining such livestock at prices much less than it would bring in the regular way of trade if such combination and conspiracy were not so engaged in and continued; and have been and are now from time to time through their said agents so fraudulently bidding up the prices of such live stock, and will, unless restrained by said court, continue so to do, and that said combination and conspiracy last aforesaid is one in restraint of trade and commerce among the several States and Territories of said United States and the District of Columbia and with foreign countries.

And the said defendants and appellants respectively say that the said circuit court erred in not holding and ruling that the said paragraph seventh does not allege any acts or facts to constitute the violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," but was and is too general and indefinite to require answer from the said respective defendants. And in not holding and ruling that the said seventh paragraph does not allege any contract, combination or conspiracy on the part of the respective defendants, in restraint of interstate or foreign trade or commerce, within the meaning of said act; and does not allege any monopolizing or attempt to monopolize, or any combination or conspiring to monopolize any part of interstate or foreign trade or commerce
72 by the said defendants, within the meaning of said act. And in not holding and ruling that the supposed contracts or acts alleged and complained of in said seventh paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

16. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the eighth paragraph thereof and as alleges that the said defendants have engaged in and intend to continue an unlawful combination and conspiracy to arbitrarily from time to time raise, lower and fix prices, and to maintain uniform prices at which they will sell, directly or through their respective agents, such fresh meats to dealers and consumers throughout the said States and Territories and the District of Columbia and foreign countries; and that the arbitrary raising, lowering, fixing and maintaining such prices, in pursuance of the said combination and conspiracy, is being and is to be effected through the action of divers of their agents and attorneys in secretly holding periodical meetings at some place or places, and there agreeing upon the prices to be adopted by said defendants, respectively, in said trade and commerce, to be enforced by them until at a subsequent meeting the same may be changed, and that said prices are notified by letters and telegrams in plain language and divers codes and ciphers, and they have been and are maintained by defendants by adhering to the same in their sales made directly and, among other ways, by collusively
73 restricting and curtailing the quantities of such meats shipped by them in such trade and commerce to the markets aforesaid, whenever necessary or conducive to the maintaining of the prices so fixed; by imposing against each other divers penalties for any and all deviations by said defendants or any of them from the prices so fixed; by establishing a uniform rule for the giving of credits to dealers throughout the said States and Territories and District of Columbia and foreign countries, and for the conduct of the business of such dealers, with penalties as between the said defendants for violations thereof; by notifying each other of the delinquencies of the said dealers and keeping what is commonly known

as a "black list" of such delinquents and refusing to sell such meats to any of such delinquents; which said supposed combination and conspiracy is there alleged to be one in restraint and monopoly of commerce among the several States and Territories of the said United States and the District of Columbia and with foreign countries.

And the said defendants and appellants respectively say that the said circuit court erred in not holding and ruling that the said paragraph eighth does not allege any acts or facts sufficient to constitute the violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," but was and is too general and indefinite to require answer from the said respective defendants. And in not holding and ruling that the said eighth paragraph does not allege any contract, combination or conspiracy on the part of the
74 respective defendants in restraint of interstate or foreign trade or commerce, within the meaning of said act; and does not allege any monopolizing or attempt to monopolize, or any combination or conspiring to monopolize any part of interstate or foreign trade or commerce by the said defendants, within the meaning of said act. And in not holding and ruling that the supposed contracts or acts alleged and complained of in said eighth paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

17. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the ninth paragraph thereof and as alleges that the said defendants have engaged in and intend to continue an unlawful combination and conspiracy to direct and require their respective agents at and near many of the markets for such fresh meats throughout the said several States and Territories and the District of Columbia to arbitrarily make and impose uniform charges for cartage for the delivery, upon making sales to dealers and consumers in those markets, of the meats shipped to them through the said agents by the said defendants respectively, from their said several points of preparation of the same, when no such charges have been or are customary in such trade and commerce, or would be made but for said supposed combination and conspiracy, thereby increasing the charges for such meats to said dealers and consumers in such markets, and preventing the
75 purchase of the same by those who are unable or unwilling to pay more than the price of the meats themselves without such additional charge; which said supposed combination is there alleged to be in restraint of said trade and commerce aforesaid.

And the said defendants and appellants respectively say that the said circuit court erred in not holding and ruling that the said paragraph ninth does not allege any acts or facts sufficient to constitute the violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful

restraints and monopolies," but was and is too general and indefinite to require answer from the said respective defendants. And in not holding and ruling that the said ninth paragraph does not allege any contract, combination or conspiracy on the part of the respective defendants in restraint of interstate or foreign trade or commerce, within the meaning of said act; or any combination or conspiring to monopolize any part of interstate or foreign trade or commerce by the said defendants, within the meaning of said act. And in not holding and ruling that the supposed contracts or acts alleged and complained of in said ninth paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

76 18. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the tenth paragraph thereof and as alleges that the schedule of rates, fares and charges for the transportation of live stock to the places of its conversion into meats as alleged in said bill or petition, which have been established and published by the common carriers by railroad, subject to the provisions of the laws of the United States for the regulation of commerce, were and are and will be the only lawful rates for the transportation, as aforesaid, of such articles, and that the defendants intending thereby to monopolize and attempt to monopolize the commerce aforesaid and prevent competition therein, have all and each engaged in and will continue arrangements and agreements with divers officers and agents of such common carriers, whereby said defendants were to receive and have received and will continue to receive, by means of rebates and other devices, unlawful rates for such transportation much less than the said lawful rates, and were to exclusively enjoy and share such unlawful advantage, to the exclusion of competitors and would-be competitors and the general public, and have accordingly so enjoyed and shared them, and will, unless restrained by the court, continue to do so; and by force of the consequent inability of competitors and would-be competitors to engage or continue in such commerce without ruinous loss, have monopolized and are monopolizing and will continue to monopolize the said commerce, and have attempted and are attempting and will attempt to monopolize such com-

77 merce in live stock and fresh meats among the States and Territories and the District of Columbia and with foreign countries; which supposed scheme to monopolize it is there alleged is also a combination and conspiracy in restraint of trade and commerce among the States and Territories and the District of Columbia and with foreign countries.

And the said defendants and appellants respectively say that the said circuit court erred in not holding and ruling that the said paragraph tenth does not allege any acts or facts sufficient to constitute the violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints

and monopolies," but was and is too general and indefinite to require answer from the said respective defendants. And in not holding and ruling that the said tenth paragraph does not allege any contract, combination or conspiracy on the part of the respective defendants in restraint of interstate or foreign trade or commerce, within the meaning of said act; or any combination or conspiring to monopolize any part of interstate or foreign trade or commerce by the said defendants, within the meaning of said act. And in not holding and ruling that the supposed contracts or acts alleged and complained of in said tenth paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

And the circuit court erred in not holding and ruling that the supposed acts alleged in said tenth paragraph, as therein alleged,
78 are not each the acts of all of the said defendants; but they are, respectively, alleged acts of one or more of the defendants acting separately in making each for itself or himself the alleged arrangements and agreements with common carriers there referred to; and that the said tenth clause and the bill in those allegations is multifarious, and that there is a misjoinder therein of the alleged causes of action of the parties defendant in that behalf. And the circuit court erred in not holding and ruling that the supposed acts of the respective defendants in said tenth clause alleged are not forbidden by the act in question or by any other law, and that either or any of the defendants, acting separately with respect to his or its own business, is not, and within the sanction of the Federal Constitution could not be forbidden from agreeing for or receiving the rates of transportation referred to in said tenth clause of said bill.

19. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the eleventh paragraph thereof and as alleges that the said defendants now are and for years past have been in combination and conspiracy with each other and with the railroad companies and others to obtain a monopoly of the supply and distribution of fresh meats throughout the United States and its Territories and shipments thereof to foreign countries.

And the said defendants and appellants respectively say that the circuit court erred in not holding and ruling that the said paragraph eleventh does not allege any acts or facts sufficient
79 to constitute the violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," but was and is too general and indefinite to require answer from the said respective defendants. And in not holding and ruling that the said eleventh paragraph does not allege any contract, combination or conspiracy on the part of the respective defendants in restraint of interstate or foreign trade or commerce, within the meaning of said act; or any combination or conspiracy to monopolize any part of interstate or foreign trade or commerce by the said defendants, within the meaning of said act. And in not holding and ruling that the supposed

contracts or acts alleged and complained of in said eleventh paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

20. The said circuit court erred in rendering and entering its decree in favor of the said complainant and in awarding or issuing any injunction thereon against the said respective defendants, and in decreeing and ordering that the injunction therein mentioned should be made permanent.

21. The circuit court erred in not holding and decreeing in favor of the said respective defendants and in not dismissing said
80 bill or petition.

Wherefore, the said respective defendants and appellants pray that the said decree of the circuit court of the United States for the northern district of Illinois may be reversed, etc.

JOHN S. MILLER,
Counsel for said Defendants and Appellants.

(Endorsed:) Filed July 18, 1903. Marshall E. Sampsell, clerk.

81 And on to-wit: the 18th day of July, in the July term of said court, 1903, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, circuit judge, appears the following entry to-wit:

Order of July 18, 1903, *Allowing Appeal.*

THE UNITED STATES OF AMERICA
vs.
SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, The Hammond Packing Company, and Armour and Company, Corporations under the Laws of Illinois; The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Corporations under the Laws of New Jersey, Michigan, and New York Respectively; Nelson Morris, Edward Morris, and Ira N. Morris, Copartners as Nelson Morris, and Company; J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, and Henry Veeder, Citizens of Illinois; Edward C. Swift, a Citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, Citizens of the State of New York. } No. 26291.

On hearing and filing of petition of Swift and Company, The Cudahy Packing Company, The Hammond Packing Company and

Armour and Company, corporations under the laws of Illinois, The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations under the laws of New Jersey, Michigan and New York, respectively, Nelson Morris, Edward Morris and Ira N. Morris, copartners as Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick
82 Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder and Henry Veeder, citizens of Illinois, Edward C. Swift, a citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, citizens of the State of New York, defendants herein, for an order allowing an appeal, and the assignment of errors herein made and filed by the said defendants with said petition for appeal,—on motion of John S. Miller, Esq., of counsel for said defendants and appellants, it is ordered that an appeal to the Supreme Court of the United States from the final decree heretofore made and entered and filed herein on the twenty-sixth day of May, 1903, be, and the same is hereby, allowed, and that a certified transcript of the record in this cause and all proceedinge herein, including the said final decree, be forthwith transmitted to the said Supreme Court of the United States.

It is further ordered that the amount of the security on appeal herein to be furnished by the said defendants be and the same is hereby fixed at the sum of five hundred dollars, and that the appeal bond of said appellants with Charles W. Armour and Charles S. Pitkin as sureties, here now presented, be and the same is approved and filed.

83 And on the same day to-wit: the 18th day of July, 1903, there was filed in the clerk's office of said court in said entitled cause a certain bond on appeal in words and figures following to-wit:

84 *Bond on Appeal.*

Know all men by these presents, that we, Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, and Armour and Company, corporations under the laws of Illinois, the Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations under the laws of New Jersey, Michigan and New York respectively, Nelson Morris, Edward Morris, and Ira N. Morris, co-partners as Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H.

Veeder, and Henry Veeder, citizens of Illinois, Edward C. Swift, a citizen of Massachusetts, and Ferdinand Sulzberger and W. H. Noyes, citizens of the State of New York, as principals, and Charles W. Armour and Charles S. Pitkin as sureties, are held and firmly bound unto the United States of America in the full and just sum of five hundred ($500.) dollars, to be paid to the said The United States of America, to which payment, well and truly to be made, we bind ourselves and our respective successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this seventeenth day of
85 June in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a session of the circuit court of the United States for the northern district of Illinois, in the northern division thereof, in a suit pending in said court between The United States of America, complainant, and Swift and Company, The Cudahy Packing Company, The Hammond Packing Company, Armour and Company, The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, Nelson Morris, Edward Morris and Ira N. Morris, co-partners under the name of Nelson Morris and Company, *et al.*, defendants, general number 26,291 in said court, a decree was rendered against the said Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, Armour and Company, the Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations, and Nelson Morris, Edward Morris and Ira N. Morris, co-partners under the name of Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Connors, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, and the said Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, Armour and Company, the Armour Packing Company, the G. H. Hammond Company, Schwartzchild
85½ and Sulzberger Company, corporations, and Nelson Morris, Edward Morris and Ira N. Morris, co-partners under the name of Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Connors, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, having obtained from said court an order allowing an appeal to the Supreme Court of the United States to reverse the decree of the aforesaid suit, and a citation directed to the United States of America is about to be issued

citing and admonishing the United States of America to be and appear at and before the Supreme Court of the United States aforesaid.

Now the condition of the above obligation is such that if the said Swift and Company, the Cudahy Packing Company, the Hammond Packing Company, Armour and Company, the Armour Packing Company, the G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations, and Nelson Morris, Edward Morris and Ira N. Morris, co-partners under the name of Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Connors, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert
86 F. Brochert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Plaelzer, William Russell, Albert H. Veeder, Henry Veeder, Edward C. Swift, Ferdinand Sulzberger and W. H. Noyes, shall prosecute their said appeal to effect, and shall answer all damages and costs that may be awarded against them, if they fail to make their plea good, then the above obligation is to be void; otherwise to remain in full force and virtue.

SWIFT AND COMPANY,
By L. F. SWIFT, *President.*

Attest:

[Corporate Seal.]

D. E. HARTWELL, *Secretary.*

THE CUDAHY PACKING COMPANY,
By MICHAEL CUDAHY, *President.*

Attest:

[Corporate Seal.]

A. F. BORCHERDT, *Secretary.*

87 THE HAMMOND PACKING COMPANY,
By J. P. LYMAN, *President.*

Attest:

[Corporate Seal.]

J. D. STANDISH, *Secretary.*

ARMOUR AND COMPANY,
By J. OGDEN ARMOUR, *President.*

Attest:

[Corporate Seal.]

C. F. LANGDON, *Secretary.*

THE G. H. HAMMOND COMPANY,
By J. P. LYMAN, *President.*

Attest:

[Corporate Seal.]

J. D. STANDISH, *Secretary.*

SCHWARTZCHILD AND SULZBERGER COMPANY,
By FERDINAND SULZBERGER, *President.*

Attest:

[Corporate Seal.]

"SAMUEL WEIL," *Secretary.*

ARMOUR PACKING COMPANY,
By CHARLES W. ARMOUR, *President.*

Attest:

[Corporate Seal.]

CHARLES S. PITKIN, *Secretary.*

88

NELSON MORRIS,	[SEAL.]
EDWARD MORRIS,	[SEAL.]
IRA N. MORRIS,	[SEAL.]
Co-partners as Nelson Morris & Company.	[SEAL.]
J. OGDEN ARMOUR.	[SEAL.]
CHARLES F. LANGDON.	[SEAL.]
JESSE P. LYMAN.	[SEAL.]
CALVIN M. FAVORITE.	[SEAL.]
ARTHUR MEEKER.	[SEAL.]
PATRICK A. VALENTINE.	[SEAL.]
MICHAEL CUDAHY.	[SEAL.]
ALBERT H. VEEDER.	[SEAL.]
HENRY VEEDER.	[SEAL.]
D. EDWIN HARTWELL.	[SEAL.]
ALBERT F. BORCHERT.	[SEAL.]
EDWARD C. SWIFT.	[SEAL.]
L. F. SWIFT.	[SEAL.]
W. H. NOYES.	[SEAL.]
WILLIAM RUSSELL.	[SEAL.]
FERDINAND SULZBERGER.	[SEAL.]
CHARLES W. ARMOUR.	[SEAL.]
CHARLES S. PITKIN.	[SEAL.]
LAWRENCE A. CARTON.	[SEAL.]
THOMAS J. CONNERS.	[SEAL.]
F. E. VOGEL.	[SEAL.]
LOUIS PFAELZER.	[SEAL.]
EDWARD A. CUDAHY.	[SEAL.]
PATRICK CUDAHY.	[SEAL.]

[Endorsed:] U. S. *vs.* Swift *et al.* Copies Appeal bond.

89 This bond approved as to form, amount and sufficiency of sureties.

P. S. GROSSCUP,
Circuit Judge.

(Endorsed:) Filed July 18, 1903 Marshall E. Sampsell clerk.

90 NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division, }

I, Marshall E. Sampsell, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of proceedings had in said court and made in accordance with præcipe filed in said court in the cause entitled The United States of America *vs.* Swift and Company, The Cudahy Packing Company, The Hammond Packing Company, and Armour and Company, corporations under the laws of Illinois, The Armour Packing Company, The G. H. Hammond Company, Schwartzchild and Sulzberger Company, corporations under the laws of New Jersey, Michigan and New York, respectively, Nelson Morris, Edward Morris and Ira N. Morris, copartners as Nelson Morris and Company, J. Ogden Armour, Patrick A. Valentine, Calvin M. Favorite, Arthur Meeker, Thomas J. Conners, Charles F. Langdon, Michael Cudahy, Edward A. Cudahy, Patrick Cudahy, Albert F. Borchert, Louis F. Swift, Lawrence A. Carton, D. Edwin Hartwell, Jesse P. Lyman, Frank E. Vogel, Louis Pfaelzer, William Russell, Albert H. Veeder and Henry Veeder, citizens of Illinois, Edward C. Swift, a citizen of Massachusetts and Ferdinand Sulzberger and W. H. Noyes, citizens of the State of New York, as the same appear from the original records and files of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the city of Chicago, in said district, this 12th day of August, 1903.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL, *Clerk.*

91 UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a petition for appeal, filed in the clerk's office of the circuit court of the United States, northern district of Illinois, northern division, and order of said court allowing said appeal in cause No. 26,291 therein, wherein Swift and Company and others were defendants and are appellants as aforesaid, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Peter S. Grosscup, circuit judge, this eighteenth day of July, in the year of our Lord one thousand nine hundred and three.

P. S. GROSSCUP, *Judge.*

Due service of the foregoing citation this 18th day of July 1903 is admitted.

S. H. BETHEA,
U. S. District Attorney for the United States.

[Endorsed:] No. 26291 Supreme Court of the United States United States *vs.* Swift and Company *et al.* Citation To the Supreme Court of the United States Circuit court of the United States, northern district of Illinois, northern division. Filed Jul- 20 1903 Marshall E. Sampsell, clerk.

Endorsed on cover: File No. 19,046. N. Illinois C. C. U. S. Term No. 103. Swift and Company *et al.*, appellants, *vs.* The United States. Filed August 14, 1903. File No. 19,046.

FILE COPY.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

No. 103.

SWIFT AND COMPANY, THE ARMOUR PACKING COMPANY, THE HAMMOND PACKING COMPANY, ARMOUR AND COMPANY, THE ARMOUR PACKING COMPANY, THE G. H. HAMMOND COMPANY, ARMOUR FERTILIZER AND SUPPLY WORKS, CORNELIUS, CONSTANTINE, ETC., AND NELSON MORRIS, EDWARD MORRIS AND HARRY H. MORRIS, CO-PARTNERS AS NELSON MORRIS AND COMPANY, J. OGDEN ARMOUR, PATRICK A. VALENTINE, CALVIN M. FAYERTE, ARTHUR MEEKER, THOMAS J. CONNING, CHARLES F. LAMBORN, RICHARD CUDAHY, EDWARD A. CUDAHY, PATRICK CUDAHY, ALBERT F. HORCHEIMER, LOUIS F. SWIFT, LAWRENCE A. CARTON, D. ADDISON HARTWELL, JOSEPH F. LOGAN, FRANK E. VOGEL, LOUIS PFAELZER, WILLIAM RITCHIE, ALBERT M. WHITE, HENRY JEFFRIS, EDWARD C. SWIFT, FERDINAND SOLBERGER, AND W. H. NOYES,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF AND ARGUMENT FOR APPELLANTS.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1904.

No. 188.

SWIFT AND COMPANY, THE CUDAHY PACKING COMPANY, THE HAMMOND PACKING COMPANY, ARMOUR AND COMPANY, THE ARMOUR PACKING COMPANY, THE G. H. HAMMOND COMPANY, SCHWARTZCHILD AND SULZBERGER COMPANY, CORPORATIONS, ETC., AND NELSON MORRIS, EDWARD MORRIS AND IRA N. MORRIS, COPARTNERS AS NELSON MORRIS AND COMPANY, J. OGDEN ARMOUR, PATRICK A. VALENTINE, CALVIN M. FAVORITE, ARTHUR MEEKER, THOMAS J. CONNERS, CHARLES F. LANGDON, MICHAEL CUDAHY, EDWARD A. CUDAHY, PATRICK CUDAHY, ALBERT F. BORCHERT, LOUIS F. SWIFT, LAWRENCE A. CARTON, D. EDWIN HARTWELL, JESSE P. LYMAN, FRANK E. VOGEL, LOUIS PFAELZER, WILLIAM RUSSELL, ALBERT H. VEEDER, HENRY VEEDER, EDWARD C. SWIFT, FERDINAND SULZBERGER AND W. H. NOYES,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF AND ARGUMENT FOR APPELLANTS.

On May 10, 1902, the United States filed its bill or petition against appellants under the act of Congress of July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies."

The respective corporate defendants filed their joint

and several general and special demurrers to the bill and also to specific portions thereof. (Trans., 21-22.) The other defendants also filed their joint and several demurrers, which were similar in form, and general and special to the bill, and also to specific portions thereof (*id.*, 23-24).

Upon the hearing thereof, the Circuit Court, on April 4, 1903, overruled the demurrers (*id.*, 33-35) and rendered its opinion, in which that conclusion was reached (*id.*, 26-32).

The defendants elected to stand by their demurrers, and thereupon the court entered its final decree in favor of the Government and against the defendants (*id.*, 36-38). This appeal is prosecuted by defendants to review that ruling and decree.

The Petition or Bill of Complaint.

The petition or bill makes the appellants here defendants and alleges as follows (Trans., 3-10):

First: That said defendant corporations, partnership and persons, for many years last past have been and now are engaged in the business of buying live stock at divers points throughout the United States where stock yards and such like open and competitive markets for the sale of live stock exist—at Chicago, Illinois; Omaha, Nebraska; Sioux City, Iowa; St. Joseph and Kansas City, Missouri; East St. Louis, Illinois, and St. Paul, Minnesota, and slaughtering such live stock at extensive plants for that purpose maintained by certain of said defendants, respectively, to wit: the plants of Armour & Company at Chicago, East St. Louis, Kansas City, South Omaha and Sioux City; the plants of the Cudahy Packing Company at South Omaha, Kansas City and Sioux City, and at Cudahy, Wisconsin; the plants of the Hammond Packing Company at Chicago and Omaha and at Hammond, Indiana, and South St. Joseph, Missouri; the plants of Nelson Morris & Company at Chicago, East

St. Louis and South St. Joseph; the plants of the Schwartzchild & Sulzberger Company at Chicago and Kansas City, and the plants of Swift & Company at Chicago, East St. Louis, South St. Joseph, Kansas City, South Omaha and St. Paul, and at said several plants converting said live stock into fresh meat for human consumption.

Second: That defendants for many years last past have been and now are also engaged in the business of selling such fresh meats, at the several places where they are so prepared, to dealers and consumers in divers states and territories of the United States other than those wherein said meats are so prepared and sold as aforesaid, and in the District of Columbia and in foreign countries, and shipping the same meats, when so sold, from said places of their preparation, over the several lines of railroads, to such dealers and consumers, pursuant to such sales, and in so doing have been and are engaged in trade and commerce among the several states and territories of the United States, and District of Columbia, and with foreign nations.

Third: That defendants for many years have been and are also engaged in the business of shipping such fresh meats from said several points where the same are so prepared for consumption, over the several lines of common carriers, to their respective agents located at and near the principal markets for such meats in other states and territories than those wherein the said fresh meats are so prepared for consumption as aforesaid, and in the District of Columbia, and in foreign countries, for sale by those agents in those markets and in such other states and territories and the District of Columbia and in foreign countries, to dealers and consumers, and have been and are, through those agents, selling the same in those markets, and in so doing have been and are engaged in trade and commerce among the several states and territories, and the District of Columbia, and with foreign nations.

Fourth: That of the total volume of trade and commerce among said states and territories, and the District of Columbia, in fresh meats, the defendants together control about sixty per cent.,—having during 1901 purchased and slaughtered as aforesaid, and sold and shipped in the

form of fresh meats as aforesaid, 4,000,000 cattle, 5,000,000 sheep, and 6,000,000 hogs.

Fifth: That as to such trade and commerce among the several states and territories and District of Columbia and with foreign nations in fresh meats the defendants should, and but for the acts hereinafter complained of would, be and remain in free and unrestrained competition with each other.

Sixth: That defendants, in violation of the provisions of said act of congress of July 2, 1890, and in order to restrain competition among themselves (which would otherwise exist) as to the purchase of live stock necessary to the production of the meats produced by them, have engaged in and intend to continue an unlawful combination and conspiracy between themselves for directing and requiring their respective purchasing agents at the said several stock yards and open and competitive markets where they customarily purchase such live stock, to wit: Kansas City, St. Joseph, Omaha, Sioux City, St. Paul, East St. Louis and Chicago aforesaid (the same being live stock produced and owned principally in other states and territories of the United States, and shipped by the owners thereof to such stock yards and open markets for competitive sale to persons and corporations engaged in producing and dealing in fresh meats in the manner aforesaid), to refrain from bidding against each other, except perfunctorily and without good faith when making purchases of such live stock on behalf of defendants, respectively, and by this means inducing and compelling such owners of such live stock to part with the same at such stock yards and open markets at prices less than they would there receive if such bidding were really competitive as between the said purchasing agents of defendants; and defendants have caused and are causing their agents, respectively, to refrain from bidding accordingly, and have induced and are inducing each other, and will, unless restrained by this Honorable Court, continue in pursuance of such conspiracy, to induce each other to refrain from bidding as aforesaid; which combination and conspiracy is one in restraint of trade and commerce among the several states and territories and District of Columbia and with foreign countries.

Seventh: That defendants, in further violation of the provisions of said act of congress, and in order to further restrain competition among themselves, which would otherwise exist, as to the purchase of live stock necessary to the production of the meats produced by them, and to obtain for themselves and each other undue advantage over the owners and shippers thereof in the buying of the same at the said several stock yards and open markets, have engaged in and intend to continue an unlawful combination and conspiracy among themselves for bidding up, through their respective purchasing agents, the prices of live stock for a few days at a time at the said stock yards and open markets, so that the market reports will show prices much higher than the state of the trade will warrant, and thereby inducing owners of such live stock in divers other of said states and territories to simultaneously make large shipments of such live stock from such other states and territories to such stock yards and open markets, instead of shipping the same to more natural and advantageous markets and at more natural and advantageous times in the due and proper course of such trade and business, and by this means and by reason of the resulting large offerings there of such live stock (and by thereupon refraining from bidding against each other for the same), obtaining such live stock at prices much less than it would bring in the regular way of trade if such combination and conspiracy were not so engaged in and continued; and have been and are now from time to time, through their said agents so fraudulently bidding up the prices of such stock, and will, unless restrained by the court, continue to do so; which said combination and conspiracy last aforesaid is also one in restraint of trade and commerce among the several states and territories and the District of Columbia and with foreign countries.

Eighth: That defendants, in violation of the provisions of said act of congress, and in order to restrain and destroy competition among themselves as to such trade and commerce, and monopolize such trade and commerce, have engaged in and intend to continue an unlawful combination and conspiracy to arbitrarily from time to time raise, lower, and fix prices, and to maintain uniform prices at which they will sell, directly or through their respective

agents, such fresh meats to dealers and consumers throughout the said United States and territories and the District of Columbia and foreign countries; and that the arbitrary raising, lowering, fixing, and maintaining of such prices, in pursuance of the said combination and conspiracy, is being and is to be effected through the action of divers of their agents and attorneys to petitioner unknown, in secretly holding periodical meetings at some place or places to petitioner unknown, and there agreeing upon the prices to be adopted by the said defendants, respectively, in such trade and commerce, to be enforced by them until at a subsequent meeting the same may be changed; which said prices are notified by letters and telegrams in plain language and divers codes and ciphers; and they have been and are maintained by said defendants by adhering to the same in their sales made directly, and, among other ways, by collusively restricting and curtailing the quantities of such meats shipped by them in such trade and commerce to the markets aforesaid, whenever necessary or conducive to the maintaining of the prices so fixed; by imposing against each other divers penalties for any and all deviations by defendants or any of them from the prices so fixed; by establishing a uniform rule for the giving of credits to dealers throughout said states and territories and District of Columbia and foreign countries, and for the conduct of the business of such dealers, with penalties as between the defendants for violation thereof; by notifying each other of the delinquencies of said dealers, and keeping what is commonly known as a "black list" of such delinquents, and refusing to sell such meats to any of such delinquents; which said combination and conspiracy above set forth is one in restraint and monopoly of commerce among the several states and territories and District of Columbia and with foreign countries.

Ninth: And defendants, in violation of the provisions of said act of congress, have engaged in and intend to continue an unlawful combination and conspiracy to direct and require their respective agents at and near many of the markets for such fresh meats throughout said several states and territories and the District of Columbia, to arbitrarily make and impose uniform charges

for cartage for the delivery, upon making sales to dealers and consumers in those markets, of the meats shipped to them through said agents by the defendants, respectively, from their said several points of preparation of the same, when no such charges have been or are customary in such trade and commerce, or would be made but for said combination and conspiracy, thereby increasing the charges for such meats to said dealers and consumers in such markets and preventing the purchase of the same by those who are unable or unwilling to pay more than the price of the meats themselves without such additional charge; which said combination is also in restraint of such trade and commerce aforesaid.

Tenth: That, notwithstanding the common carriers by railroad, subject to the provisions of the laws of the United States for the regulation of commerce, have established and published, and do now and will establish and publish, respectively, their schedules of rates, fares, and charges for the transportation of live stock to the places of its conversion into such meats as aforesaid, and, for the transportation of such meats as aforesaid, and notwithstanding such rates were, and are, and will be the only lawful rates for the transportation of such articles as aforesaid, the defendants, intending thereby to monopolize and attempt to monopolize the commerce aforesaid and prevent competition therein, have all and each engaged in and will continue arrangements and agreements with divers officers and agents of such common carriers, whereby said defendants were to receive and have received and will continue to receive, by means of rebates and other devices, unlawful rates for such transportation, much less than the said lawful rates, and were to exclusively enjoy and share said unlawful advantage to the exclusion of competitors and would-be competitors and the general public, and have accordingly so enjoyed and shared them, and will, unless restrained by this Honorable Court, continue to do so; and by force of the consequent inability of competitors and would-be competitors to engage or continue in such commerce without ruinous loss have monopolized and are monopolizing and will continue to monopolize the said commerce, and have attempted and are attempting and will attempt to monopolize such commerce in live stock and fresh meats

among the states and territories and the District of Columbia and with foreign countries; which scheme to monopolize is also a combination and conspiracy in restraint of trade and commerce among the states and territories and the District of Columbia and with foreign countries.

Eleventh: That said defendants are now and for years past have been in combination and conspiracy with each other and with the railroad companies and others to complainant unknown, to obtain a monopoly of the supply and distribution of fresh meats throughout the United States and its territories and shipments thereof to foreign countries.

To that end the defendants do and will artificially restrain such commerce and put in force abnormal, unreasonable, and arbitrary regulations for the conduct of their own and each other's business, affecting the same from the shipment of the live stock from the plains to the final distribution of the meats to the consumer, all to the manifest injury of the people of the United States and in defiance of law.

The bill of complaint prays that the court forthwith grant a writ of injunction directed to said defendants, their agents, attorneys, etc., enjoining them and each of them, from continuing each and any of the unlawful proceedings aforesaid, and from attempting to monopolize, in the manner aforesaid or in any other manner, and by any other means and devices, the commerce aforesaid, or any part thereof, or any part of the trade or commerce among the states and territories, and District of Columbia, and with foreign nations, and especially from refraining and instructing their respective purchasing agents to refrain from bidding against each other except perfunctorily and without good faith in making purchases of live stock, and from inducing each other to so refrain, and from engaging in any combination, conspiracy, understanding, or arrangement for the purpose of bringing about such refraining from competitive bidding, and from bidding up the prices of live stock at the stock yards and open markets higher than the state of the trade will warrant, and from arbitrarily raising, lowering, fixing, and maintaining prices of their and each other's products, and from maintaining prices so fixed and uniform prices by adhering to the same in their sales, or

by restricting the quantities of meats shipped, or by imposing penalties upon themselves and each other, or by making uniform rules for credit to dealers, or by making and keeping what is commonly known as a "black list" of delinquent dealers, or by refusing to sell meats to such delinquents, or by any other method or device; and from agreeing with each other and acting in concert, with a view to fixing prices or terms for the sale or delivery of said meat products so sold, in such manner as to prevent free competition in, and restrain or monopolize, such commerce; and from imposing a charge for cartage for the delivery of their products upon making sales to dealers and consumers; and from asking and receiving, by means of rebates or otherwise, from railroad companies, less than the established and published rates for the transportation of their live stock and meat products; and that upon such final hearing to make such injunction perpetual.

The bill further prays discovery of the books, papers, accounts, letters, telegrams, records and documents whatsoever of the defendants relating in any manner, directly or indirectly, to the purchase or shipment of live stock by them or their agents, or to the sale or shipment or delivery of fresh meats by them or their agents; and for other and general relief; and for the issue of subpœna to defendants, requiring them and each of them, under a penalty and at a time and place to be therein stated, to appear and answer under oath all and singular the matters therein stated and charged, etc.

Thereupon, on May 20, 1902, the Circuit Court granted a temporary injunction. (Trans., 14-18.)

The Demurrers of the Defendants.

The demurrers are as follows:

That said complainant hath not, by said bill, stated such a case as entitles them to any such discovery or relief as is prayed for against defendants, or any of them.

That the bill is multifarious; and is for several and distinct matters and causes, in many or some of which the respective defendants, or some of them, are not interested or concerned; and is for several and distinct and

independent matters and causes, which have no relation to each other and which cannot be embraced in one suit.

To so much of said bill as seeks discovery of the books, papers, accounts, letters, telegrams, records and documents of these respective defendants, defendants severally demur, and for cause show that complainant hath not stated such a case as entitles them to any such discovery.

To so much of the bill as seeks that the respective defendants answer or make discovery, of or as to any matter therein alleged, defendants respectively demur, and for cause thereof show that complainant hath not made or stated such as entitles them to any such discovery.

To each of the following parts of the bill, separately, the said defendants in like manner demur, viz.: Such parts as are respectively alleged or contained in the third, sixth, seventh, eighth, ninth, tenth, and eleventh paragraphs or divisions of said bill, respectively, and as seek that these respective defendants may answer or make discovery with respect to the matter therein respectively alleged, and as seeks any relief with respect thereto from or against these respective defendants, or any or either of them; and as to each of said respective parts so demurred to, for causes of demurrer show that complainant hath not by the said part of said bill so demurred to stated such a case as entitles them to any such discovery or relief as is thereby sought against defendants or any or either of them. Also, that said part of said bill so demurred to is multifarious, and is for several and distinct matters and causes which have no relation to each other and in some of which these respective defendants or some of them are not interested or concerned. (*id.*, 21-24.)

Upon the hearing of the respective demurrers, the Circuit Court on April 4, 1903, entered its order overruling the demurrers (*id.*, 33-35); and rendered its opinion, in which that conclusion was reached (*id.*, 26-32).

Final Decree.

This cause coming on to be heard upon the demurrers of defendants, and the court, being advised, overruled the same, and ordered defendants to answer, and defendants having elected to stand by their demurrers and failed to answer, their default was entered.

On motion of the United States attorney, the court doth order that the preliminary injunction theretofore awarded, restraining the defendants and each of them, their respective agents and attorneys, and all other persons acting in their behalf or in behalf of either of them, or claiming so to act, from entering into, taking part in or performing any contract, combination or conspiracy, the purpose or effect of which will be, as to trade and commerce in fresh meats between the several states and territories and the District of Columbia, a restraint of trade in violation of said act of Congress of July 2, 1890, either by directing or requiring their respective agents to refrain from bidding against each other in the purchase of live stock; or collusively and by agreement to refrain from bidding against each other at the sales of live stock; or by combination, conspiracy or contract raising or lowering prices or fixing uniform prices at which the said meats will be sold, either directly or through their respective agents; or by curtailing the quantity of such meats shipped to such markets and agents; or by establishing and maintaining rules for the giving of credit to dealers in such meats, the effect of which rules will be to restrict competition; or by imposing uniform charges for cartage and delivery of such meats to dealers and consumers, the effect of which will be to restrict competition; or by any other method or device, the purpose and effect of which is to restrain commerce as aforesaid; and also from violating the provisions of said act of Congress by combining or conspiring together, or with each other and others, to monopolize or attempt to monopolize any part of the trade and commerce in fresh meats among the several states and territories and the District of Columbia, by demanding, obtaining, or with or without the connivance of the officers or agents thereof, or of any of them, receiving from railroad companies or other

common carriers transporting such fresh meats in such trade and commerce, either directly or by means of rebates, or by any other device, transportation of or for such meats from the points of the preparation and production of the same from live stock or elsewhere, to the markets for the sale of the same to dealers and consumers in other states and territories than those wherein the same are so prepared, or the District of Columbia, at less than the regular rates which may be established or in force on their several lines of transportation, under the provisions in that behalf of the laws of the United States for the regulation of commerce,—be and the same is hereby made perpetual.

But nothing herein shall be construed to prohibit the said defendants from agreeing upon charges for cartage and delivery, and other incidents connected with local sales, where such charges are not calculated to have any effect upon competition in the sales and delivery of meats; nor from establishing and maintaining rules for the giving of credit to dealers where such rules in good faith are calculated solely to protect the defendants against dishonest or irresponsible dealers, nor from curtailing the quantity of meats shipped to a given market where the purpose of such arrangement in good faith is to prevent the over accumulation of meats as perishable articles in such markets.

Nor shall anything herein contained be construed to restrain or interfere with the action of any single company or firm, by its or their officers or agents (whether such officers or agents are themselves personally made parties defendant hereto or not), acting with respect to its or their own corporate or firm business, property or affairs. (*id.*, 37-38.)

The defendants thereupon prayed and perfected this appeal; and a specification of the errors assigned is as follows:

Specification of Errors.

1. The Circuit Court erred in overruling and in not sustaining the demurrers (Trans., 42).

2. In not holding and ruling that the bill does not allege any contract, combination, or conspiracy in restraint of interstate or foreign commerce, within the meaning of the said act of congress, and in not sustaining the demurrers on that ground (*ibid.*).

3. In not holding and ruling that said bill does not allege any acts of defendants monopolizing or attempting to monopolize, or combining or conspiring to monopolize any part of said trade or commerce within the meaning of said act, and in not sustaining said respective demurrers on that ground (*ibid.*).

4. In not holding and ruling that if said act of July 2, 1890, is to be given the construction which would make said supposed acts of defendants in said bill alleged, a violation thereof, for which defendants would be subject to the penalties, injunctions or processes by said act prescribed, said act violates the provisions of the Constitution (*ibid.*).

5. In not holding and ruling that there is in said bill a misjoinder of causes of action and of persons, as alleged in said demurrer, and in not sustaining the said demurrers on that ground (*ibid.*).

6. In not holding and ruling that said bill and the allegations and charges therein are not sufficiently definite or specific, but are too general and indefinite to call for or require any answer from defendants, and in not sustaining the said demurrers on that ground (*ibid.*).

7. The Circuit Court did not have jurisdiction to enter the said decree nor to award said injunction against defendants (*ibid.*).

8. The Circuit Court erred in not holding and ruling that said bill was multifarious, and in not sustaining the demurrers upon that ground (*ibid.*).

9. In not holding and ruling that said bill was for several and distinct matters and causes, in many or some of which these respective defendants, or some of them, are not interested or concerned; and in not sustaining the demurrers thereto upon that ground (*ibid.*).

10. In not holding and ruling that the respective matters and causes in the sixth paragraph of said bill, and the matters and causes in the seventh, eighth, ninth, tenth and eleventh paragraphs of said bill, respectively, were distinct and different and independent and unconnected matters and causes, and not the same matters or causes, and that the same were improperly joined in said bill, and in not sustaining the demurrers on that ground (*id.*, 42-43).

11. In not holding that the supposed unlawful combination and conspiracy between the defendants for directing and requiring their respective purchasing agents at the several stock yards and markets to refrain from bidding against each other except perfunctorily and without good faith, in said sixth paragraph of said bill charged, and the supposed unlawful combination and conspiracy among themselves for bidding up, through their respective purchasing agents, the prices of live stock, in said seventh paragraph charged, and the said supposed unlawful combination and conspiracy to raise, lower and fix prices and to maintain uniform prices at which they will sell fresh meats, in said eighth paragraph charged, and the supposed unlawful combination and conspiracy to direct and require their respective agents at and near many of the markets for such fresh meats throughout the said states and territories and the District of Columbia to arbitrarily make and impose uniform charges for cartage, in said ninth paragraph charged, and the supposed engaging in and continuing of agreements with divers agents of common carriers, in said tenth paragraph charged, and the supposed combination and conspiracy of said defendants with each other and with the railroad companies and others to complainant unknown, to obtain a monopoly of the supply and distribution of fresh meats, in said eleventh paragraph of said bill charged,—are, respectively, distinct and different and unconnected and independent supposed combinations, conspiracies, matters and causes, and that the same are improperly joined in said bill, and in not sustaining said respective demurrers on that ground (*id.*, 43-44).

12. In not sustaining said respective demurrers to so much of said bill or petition as seeks discovery of the

books, papers, accounts, letters, telegrams, records, and documents of said respective defendants, and in overruling said respective demurrers; and in not holding and ruling that the petition seeking discovery as aforesaid, does not contain any showing of probable cause supported by oath or affirmation as required by the fourth amendment to the Constitution, or otherwise comply with said fourth amendment, but violates the provisions of the fourth and fifth amendments to the Constitution (*id.*, 44).

13. In not sustaining said respective demurrers to so much of the bill as seeks that these respective defendants may answer or make any discovery of or as to any matter or cause of complaint therein alleged, and in overruling the same; and in not holding and ruling that said petition seeking answer or discovery as aforesaid, does not contain any showing of probable cause supported by oath or affirmation as required by the fourth amendment to the Constitution, or otherwise comply with said fourth amendment, but violates the provisions of the fourth and fifth amendments to the Constitution (*ibid.*)

14. In not sustaining the respective demurrers to so much of said bill as is contained in the sixth paragraph thereof; and in not ruling that said paragraph sixth does not allege acts or facts to constitute the violation of said act of congress, but is too general and indefinite to require answering; and in not ruling that said sixth paragraph does not allege any contract, combination or conspiracy of defendants in restraint of interstate or foreign commerce within the meaning of said act, and does not allege any monopolizing or attempt to monopolize or any combination or conspiring to monopolize any part of interstate or foreign trade or commerce by defendants, within the meaning of said act; and in not ruling that the supposed contracts or acts alleged in said sixth paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce (*id.*, 44-45).

15. In not sustaining and in overruling the demurrers to so much of said bill as is contained in the seventh paragraph; and in not ruling that said seventh paragraph does not allege any acts or facts to constitute the violation of said act of congress, but is too general and indefinite to require answering; and in not ruling that said

seventh paragraph does not allege any contract, combination or conspiracy of defendants in restraint of interstate or foreign commerce within the meaning of said act, and does not allege any monopolizing or attempt to monopolize, or any combination or conspiring to monoplize any part of interstate or foreign trade or commerce by defendants, within the meaning of said act; and in not ruling that the supposed contracts or acts alleged in said seventh paragraph are not any part of and do not regulate or affect interstate or foreign commerce (*id.*, 45-46).

16. A specification of error with respect to so much of said bill as is contained in the eighth paragraph, similar to the fourteenth and fifteenth specifications, *supra* (*id.*, 46-47).

17. A specification of error with respect to so much of said bill as is contained in the ninth paragraph, similar to the fourteenth and fifteenth specifications, *supra* (*id.*, 47-48).

18. A specification of error with respect to so much of said bill as is contained in the tenth paragraph, similar to the fourteenth and fifteenth specifications, *supra*. Also, that the court erred in not ruling that the supposed acts alleged in said tenth paragraph are not each the acts of all of said defendants, but are alleged acts of one or more defendants acting separately, each for itself or himself, and that said tenth clause and the bill in those allegations is multifarious, and that there is therein a misjoinder of the alleged causes of action in that behalf; and the court erred in not ruling that the supposed acts of defendants in said tenth clause are not forbidden by the act in question or by any other law, and that either of the defendants acting separately with respect to his or its own business is not, and within the Constitution could not be, forbidden from agreeing for or respecting the rates of transportation therein referred to (*id.*, 48-49).

19. A specification of error with respect to so much of said bill as is contained in the eleventh paragraph, similar to the fourteenth and fifteenth specifications, *supra* (*id.*, 49-50).

20, 21. The court erred in entering its decree in favor of complainant, and in awarding any injunction thereon against defendants, and in decreeing that said injunction be made permanent, and in not dismissing the bill (*id.*, 50).

BRIEF.

I.

1. The charges in each of the paragraphs or counts of the bill or petition of alleged violations of the Sherman Act (Trans., 5-9) are, respectively, mere statements of legal conclusions. Each is bad on demurrer for that reason.

These charges would be bad on that ground, even in an indictment under this act. *In re* Greene, 52 Fed. R., 104, 111-12, 115-16; *United States* v. *Cruikshank*, 92 U. S., 542, 563; *same* v. *Simmons*, 96 *id.*, 360; *same* v. *Carll*, 105 *id.*, 611; *same* v. *Britton*, 107 *id.*, 655.

And *a fortiori* are they bad in a bill or petition in equity, which is required to state the facts essential to the cause of action. *Lawson* v. *Hewell*, 118 Cal., 613; *Wright* v. *Dame*, 22 Pick., 59; *Ambler* v. *Choteau* 107 U. S., 586, 591; *Van Weel* v. *Winston*, 115 U. S., 228, 237-38; 1 Foster Fed. Prac., Sec. 67.

The *facts* alleged are looked at and not adjectives or adverbs or epithets. *Magniac* v. *Thompson*, 2 Wall., Jr., 209 (per Grier, Cir. Justice); *Price* v. *Coleman*, 21 Fed. R., 357 (per Gray, Cir. Justice); *Van Weel* v. *Winston, ut sup.; Ambler* v. *Choteau, ut sup.*

The importance of applying this rule with strictness here is more marked because answer by the defendants under oath is called for.

This point is properly raised by demurrer. 1 Daniel Ch. Pr., 372. It was so raised in *Van Weel* v. *Winston, supra.*

2. The decree complained of, which is merely ore of

injunction, is erroneous on like grounds of indefiniteness. *Laurie* v. *Laurie,* 9 Paige, 234, 235; *Robinson* v. *Clapp,* 65 Conn., 365; *Whipple* v. *Hutchinson,* 4 Batchf., 190.

It makes clear the misconception of the Sherman Act and of Federal power to regulate commerce upon which the bill and decree proceed. They appear to go upon the theory that under the act of Congress the Federal courts are to regulate commerce, and the decree enjoins, not specific acts, but violations of the statute in terms as general as the act of Congress itself. A defendant cannot know from its terms what he may or may not do without making himself liable as in contempt.

This makes the insufficiency of the bill more obvious, as no valid decree could have been entered upon its allegations.

3. The provisions of the Sherman Act do not contemplate such a general proceeding or decree to interfere in advance with future dealings, as interstate commerce, which may be interstate trade or may be domestic trade according to the future and changeable intention of the dealers. *United States* v. *E. C. Knight Co.,* 156 U. S., 1, 15.

II.

The business of defendants of purchasing live stock and of selling fresh meats produced therefrom, as described in the bill (Trans., 4-5), is not, upon the allegations of fact in the bill, interstate or foreign commerce.

1. The purchase of cattle as alleged and described in the first paragraph of the bill (*id.*, 4-5) is not alleged or shown to be interstate commerce.

2. The business of defendants of selling such fresh meats, at the several places where they are so prepared, as described in the second paragraph (*id.*, 5), is not, under the facts there alleged, interstate trade or commerce. The sales and deliveries, although to dealers in other States and Territories, are there alleged to be made at the places where the meats are prepared by defendants, and are domestic sales.

The deliveries by defendants to the carriers, who are agents of the purchasers in that respect, under the allegations of the bill, are deliveries to the purchasers in the State where the sale is made; and the sales and deliveries are there fully completed. *Merchant* v. *Chapman*, 4 Allen, 362; *Orcutt* v. *Nelson*, 1 Gray, 543; *Waldron* v. *Romaine*, 22 N. Y., 368; *Ramsey & Gore Co.* v. *Kelsea*, 55 N. J. L., 320; *Cotte* v. *Harden*, 4 East., 211; *Brown* v. *Hodgson*, 2 Camp., 86; *Groning* v. *Needham*, 5 Maule & S., 189; 2 Kent Com., 499; *Crossman* v. *Lurman*, 192 U. S., 189, 198-200.

The sellers' act in delivering the merchandise to the common carrier, or carrying the merchandise to the carrier's depot (if that is taken to be in effect alleged), is

not any part of the interstate transportation, and does not make the goods the subject of interstate commerce. *Coe* v. *Errol*, 116 U. S., 517, 528.

The fact that the sale is made with a view to the goods being transported by the buyer's agent to another State after the sale and delivery is fully completed, does not make the sale interstate commerce. *Kidd* v. *Pearson*, 128 U. S., 1, 23-24; *United States* v. *E. C. Knight Co.*, 156 U. S., 1, 13-17.

3. The sales alleged in the third paragraph of the bill, by agents of the owners in other States and Territories to whom the owners of the fresh meats have shipped the same for sale there by such agents on the ground (*id.*, 5), are not interstate commerce. *Coe* v. *Errol*, 116 U. S., 517, 525, 526; *Kidd* v. *Pearson*, 128 U. S., 1, 23-24; *United States* v. *Knight Co.*, 156 U. S., 1, 13-17; *Austin* v. *Tennessee*, 179 U. S., 343; *Crossman* v. *Lurman*, 192 U. S., 189, 198-200; *Am. Harrow Co.* v. *Shaffer*, 68 Fed., 750; *Stevens* v. *Ohio*, 93 Fed., 793.

Under the allegations here in question, it is to be taken that the meats, before the sales here referred to are made, have come to their place of rest and are at rest for an indefinite time awaiting sale at their place of destination, and are a commodity in the market where the sales are made; and that the sales are not in the "original packages"; and that the meats, at the time of the sales, have become a part of the general property in the State where sold, and are there handled and sold as such. *Southern Coal Co.* v. *Bates*, 156 U. S., 577, 588-89; *Brown* v. *Houston*, 114 U. S., 623, 632-33; *Emert* v. *Missouri*, 156 U. S., 296, 310; *Singer Mfg. Co.* v. *Wright*, 97 Ga., 123.

4. The point here made is entirely consistent with the rulings in many cases, that the owner of merchandise, who transports it from one State to another for sale, has a right (which cannot be interfered with by state or municipal laws) to sell it as an article of interstate commerce. He also has a right to make such article part of the general property of the State into which it is taken, and he then has the right to sell and others have the right to purchase it as an article of domestic commerce, which cannot be interfered with by federal law. The Sherman Act does not seek to and could not interfere with that right. *United States* v. *E. C. Knight Co.*, 156 U. S., 15, and *Kidd* v. *Pearson* and *Veazie* v. *Moor*, there cited. But this bill here does seek to interfere with that right.

Again, the point here made is not touched by the line of decisions holding that state or municipal laws are invalid, which, by taxation or other regulations, discriminate against merchandise brought from another State, or seek to prevent interstate commerce therein,—such as *Welton* v. *Missouri*, 91 U. S., 465; *Walling* v. *Michigan*, 116 U. S., 446; *Minnesota* v. *Barber*, 136 U. S., 313; *Brimmer* v. *Rebman*, 138 U. S., 78, and *Schollenberger* v. *Penna.*, 171 U. S., 1, 24-25.

III.

The bill of complaint does not show any contract, combination or conspiracy in restraint of interstate trade or commerce within the meaning of the Sherman Act.

It does not allege any acts of defendants monopolizing or attempting to monopolize or combining or conspiring to monopolize such trade or commerce.

If the act in question be given a construction which would sustain this bill of complaint, the statute would be unconstitutional.

The alleged offenses complained of are set forth in the sixth, seventh, eighth, ninth, tenth and eleventh paragraphs of the bill.

1. *As to the sixth and seventh paragraphs* (Trans., 5-7) we maintain:

(a) The allegations of combination and conspiracy here are of mere legal conclusions. (See *supra*, p. 17, Point I.)

(b) That the purchases of live stock referred to in the sixth and seventh paragraphs, as therein alleged, are not interstate commerce.

> The first paragraph of the bill in which the business of purchasing live stock for slaughter is set forth and described, does not allege or show that the business is interstate commerce (Trans., 4; *supra*, Point II., p. 19).
>
> The description of the live stock in the sixth paragraph, as live stock produced and owned principally in other States and Territories, and shipped by the owners to the places where sold, for sale to persons engaged in producing and dealing in fresh meats, does not show that the sales of the live

stock are interstate commerce. The live stock, when offered for sale in the pens of the stock yards, are, under the allegations of fact in the bill, to be considered as having become part of the general mass of property of the State where offered for sale. The defendants purchasing the live stock have the right so to treat and deal therewith. *Brown* v. *Houston*, 114 U. S., 622, 632-33; *Pittsburgh Coal Co.* v. *Bates*, 156 U. S., 577, 588-89; *Emert* v. *Missouri*, 120 U. S., 489, 497; *Diamond Match Co.* v. *Ontonagon*, 188 U. S., 82, 92-97. When purchased, the live stock is, under the allegations of this bill, at rest for an indefinite time, awaiting sale at its place of destination (188 U. S., 95-96).

The defendants have as much right, then, to treat and deal with and purchase such live stock as an article of domestic commerce as the State has so to treat it for the purposes of taxation or regulation. This bill seeks to interfere with that right under the Sherman Act.

If the sworn allegations of the bill in this respect were to be supplemented by other facts, as matters of common knowledge, with respect to the situation of the live stock when sold, such as appeared in the *Hopkins* and *Anderson cases*, the case of the Government would be no better. It would then appear that the cattle and other live stock are shipped to commission merchants at the stock yards; are then placed in the pens of the stock yards companies, and there held, cared for and fed by the stock yards company for the account of the commission merchants, and under the allegations here it must be taken that their bulk is broken up; they are divided into lots and sold and delivered by the commission merchant as the principal or owner thereof, and so are not purchased as articles of interstate commerce.

(c) But if these purchases of live stock are interstate commerce, the acts alleged in the sixth and seventh paragraphs are not violations of the Sherman Act. *Hopkins* v. *United States*, 171 U. S., 591; *Anderson* v.

Same, 171 U. S., 604. They are the exercise of a constitutional right of defendants to control their own business.

There is nothing in the bill to show the proportion of the entire number of head of live stock offered for sale at the markets in question, which is bought by the defendants for the purposes of the production of fresh meat; and so there is nothing to show anything like monopoly or attempt at monopoly of the live stock purchases by the defendants.

There is nothing in the bill to show any attempt on the part of the defendants to control or affect the purchases or business in the purchases of live stock of any other persons than themselves. The alleged combinations by defendants in the sixth and seventh paragraphs charged have to do merely with their own business conduct in themselves buying live stock, or determining how much they shall buy, at private sale for consumption in their own private business.

The combination charged in the sixth paragraph, for directing their respective purchasing agents "to refrain from bidding against each other, except perfunctorily, and without good faith," does not allege a combination to restrain trade; or even a combination to refrain from bidding. A perfunctory bid, made without good faith, is one which the seller could accept and enforce.

The alleged combination in the seventh paragraph, "for bidding up, through their respective purchasing agents, the prices of live stock for a few days at a time at the said stock yards and open markets," does not charge a combination to restrain trade.

These alleged combinations do not have the direct and immediate effect of restraining interstate commerce, but their effect, if any, upon interstate trade in live stock is indirect and incidental, within the meaning of the decisions of this court. The effect is not near so direct or immediate as the mutual agreement of the traders who were members of the Traders' Exchange in the *Anderson case.*

Obviously the supply of live stock for fresh meat greatly varies in the market at different seasons and times, while the demand for fresh meats for human consumption, for which defendants purchase such live stock, is comparatively constant and uniform.

It is a public benefit and not a public evil that defendants at all times be able to supply such constant demand for their fresh meats, and that at the same time they should not overstock the market with their perishable meats. This makes it proper that they should act with some concert and common understanding in their purchases of live stock for that purpose.

2. *As to the eighth paragraph* (Trans., 7) we contend:

(a) The allegation of combination and conspiracy is of a mere legal conclusion, and insufficient.

(b) The sales of fresh meats by agents of defendants, as there described, under the facts alleged, are not interstate commerce.

(c) But if it be interstate commerce, no violation of the Sherman Act is thereby shown.

No criminal conspiracy is alleged. The charge there is not of a combination or conspiracy to restrain trade (which the statute forbids), but is of a combination or conspiracy to do a lawful act, the exercise of a constitutional right, viz.: to raise, lower, fix and maintain their own prices, for their own property, in private sales, thereof by themselves. The doing that is not prohibited or made criminal by the act of congress.

A criminal conspiracy is an agreement of two or more, either to do an act criminal or unlawful in itself, or to

do a lawful act by means which are criminal or unlawful. *Pettibone* v. *United States,* 148 U. S., 203; *Comm.* v. *Shedd,* 7 Cush., 514. Here neither the act nor the means alleged are criminal or unlawful. The allegation of intent is immaterial. *Stevenson* v. *Newham,* 13 C. B., 285; *Allen* v. *Flood,* App. Cas., 1.

Again, this point is settled by the ruling in the *Knight case* (156 U. S., p. 16), that the restraint of trade, if any, which a combination by defendants to raise or lower their own prices would tend to effect "would be an indirect result, * * * and such result would not necessarily determine the object of the contract, combination or conspiracy."

3. *As to the ninth paragraph* (Trans., 7-8) we contend:

(a) The allegation is of a conclusion of law.

(b) The cartage as there described is not, under the allegations of the bill, interstate commerce. *State* v. *Knight,* 192 U. S., 21; *Detroit Etc. Ry.* v. *Interstate Commerce Com.,* 74 Fed. R., 803, 808-9, 911; *Hopkins* v. *United States,* 171 U. S., 578, 592-97.

(c) The charge is not of a conspiracy either to a criminal or unlawful act, or to do by unlawful means the lawful act of fixing their own charges for cartage.

(d) Nothing here charged has the direct, immediate or necessary effect to restrain interstate commerce.

4. *As to the tenth paragraph* (Trans., 8) we maintain:

(a) The allegation is of a legal conclusion. It also is too indefinite and general. Sufficient facts are not alleged. *United States* v. *Hanley,* 71 Fed., 672.

(b) There was no jurisdiction herein of this charge. No common contract, combination or conspiracy of the defendants with each other is alleged. The allegation that "all and each" have made agreements for less than lawful transportation rates is that they did so acting separately. That was not unlawful on the part of our defendant; much less was it any violation of the Sherman Anti-Trust Act.

(c) There is here no sufficient showing of an attempt to monopolize either the interstate transportation of live stock or fresh meats or interstate trade in live stock or fresh meats.

(d) This paragraph is multifarious, and there is therein a misjoinder of causes and parties.

5. *As to the eleventh paragraph* (Trans., 8-9) we submit that it is too general and insufficient to require argument. It is disposed by what is urged as to previous paragraphs.

IV.

Prior rulings by this court in cases arising under the Sherman Act do not sustain the Government's case here.

V.

With respect to the supposed limitations of the Sherman Act upon the right of private contract, that act is to be interpreted in the light of the principles of the common law. *United States* v. *Wong Kim Ark*, 169 U. S., 649; *Moore* v. *United States*, 91 *id.*, 270 274; *Minor* v. *Happersett*, 21 Wall., 162; *Ex parte Wilson*, 114 U. S., 417, 422; *Boyd* v. *United States*, 116 *id.*, 616, 624, 625; *Smith* v. *Alabama*, 124 *id.*, 465.

VI.

The bill of complaint is multifarious; and there is therein a misjoinder of causes and of parties. *Walker* v. *Powers,* 104 U. S., 251; *Brown* v. *Guarantee Trust Co.,* 128 *id.,* 403; *Zeigler* v. *Lake St. Ry.,* 76 Fed. Rep., 662; *Eastern Bldg. Assn.* v. *Denton,* 65 *id.,* 569.

VII.

The bill is too general and indefinite to require answer. It does not sufficiently set forth definite or specific facts.

VIII.

The demurrers to so much of the bill as prays for answer under oath, and to so much thereof as prays discovery of defendants' books, papers, etc., are well taken.

Rights protected by the fourth and fifth amendments are thereby infringed. *United States* v. *Saline Bank,* 1 Pet., 100; *Boyd* v. *United States,* 116 U. S., 616; *Counselman* v. *Hitchcock,* 142 *id.,* 547; *Livingston* v. *Tompkins,* 4 Johns. Ch., 415, 432; *Entick* v. *Carrington,* 19 Howell's St. Tr., 1029; S. C., 2 Wils., 275; *Huckle* v. Money, 2 Wils., 206; Mitford & Tyler's Eq. Pldg., 289.

ARGUMENT.

I.

THE CHARGES IN THE SIXTH, SEVENTH, EIGHTH, NINTH, TENTH, AND ELEVENTH COUNTS FOR PARAGRAPHS OF THE BILL OR PETITION ARE MERELY STATEMENTS OF LEGAL CONCLUSIONS, AND NOT FACTS. THEY ARE BAD ON DEMURRER FOR THAT REASON.

The allegations are as follows:

In the sixth paragraph or count, that the defendants, "in violation of the provisions of an act of Congress," etc., "have engaged in and intend to continue an unlawful combination and conspiracy between themselves for directing and requiring their respective purchasing agents, * * * to refrain from bidding against each other, except perfunctorily and without good faith, etc. (Trans., 5, 6.)

In the seventh paragraph, that defendants, "in further violation," etc., "have engaged in and intend to continue an unlawful combination and conspiracy among themselves for bidding up, through their respective purchasing agents, the prices of live stock," etc. (*Id.*, 6.)

In the eighth paragraph, that defendants, "in violation," etc., "have engaged in and intend to continue an unlawful combination and conspiracy to arbitrarily from time to time, raise, lower and fix prices and maintain uniform prices at which they will sell, directly or through their respective agents, such fresh meats," etc. (*Id.*, 7.)

And so in the other paragraphs, above mentioned, the allegation is of a mere legal conclusion. (*Id.*, 7, 8, 9.)

This vice is found in every paragraph or count charging an alleged violation of the Act.

Such pleading is insufficient in any pleading charging the commission of a wrong. It is bad even in an indictment under this act. *In re Greene*, 52 Fed. Rep., 104, 111-12, 115-16; *United States* v. *Cruikshank*, 92 U. S., 542; *Same* v. *Simmons*, 96 *id.*, 360; *Same* v. *Carll*, 105 *id.*, 611; *Same* v. *Britton*, 107 *id.*, 655. Or, in a declaration of law. *Hazard* v. *Griswold*, 21 Fed., 178, per GRAY, Circuit Justice. And, *a fortiori*, is it bad in a bill or petition in equity. *Magniac* v. *Thornton*, 2 Wall. Jr., 209; *Van Weel* v. *Winston*, 115 U. S., 237-38; *Moore* v. *Green*, 19 How., 69; 1 Dan. Chan. Pldg. & Prac., 324.

And where, as here, an answer under oath is required, the need of requiring the bill to set forth the specific acts and facts which call for the relief, is more obvious.

In the *Greene case*, 52 Fed. Rep., 104, Mr. Justice JACKSON (then Circuit Judge), said, respecting the charge of violating the Sherman Act in question:

> "We regard it as well settled by the authorities that an indictment, following simply the language of the act, would be wholly insufficient, for the reason that the words of the statute do not, of themselves, fully, directly and clearly set forth all the elements necessary to constitute the offense intended to be punished. *United States* v. *Cruikshank*, 92 U. S., 542; *United States* v. *Simmons*, 96 U. S., 360; *United States* v. *Carll*, 105 U. S., 611; *United States* v. *Britton*, 107 U. S., 655; *United States* v. *Trumbull*, 46 Fed. Rep., 755. * * * If the particular acts or facts charged do not, as a matter of law, constitute contracts, combinations or conspiracies in restraint of trade and commerce among the several states, or a monopoly or attempt to monopolize any part of such trade or commerce, no amount

> of affirmance and allegations that the accused 'engaged in a combination,' or 'made contracts in retraint of such trade or commerce,' or 'monopolized' or 'attempted to monopolize' the same, will avail to sustain the indictment. Whether the accused is charged with an offense is to be determined by the particular acts or facts set forth, and not by the conclusions of the pleader, although they are asserted in the words of the statute. 'Every offense consists of certain acts done or omitted under certain circumstances, and in the indictment for the offense it is not sufficient to charge the accused generally with having committed the offense, but all the circumstances constituting the offense must be specially set forth.' *United States* v. *Cruikshank*, 92 U. S., 542, 563."

In *Hazard* v. *Griswold*, 21 Fed. Rep., 178, Mr. Justice GRAY held a similar rule as to a pleading at common law averring fraud, and said:

> "By the weight of modern authority English and American, it is well settled that at law, as in equity, a mere allegation of fraud in general terms, without stating the facts on which the charge rests, is insufficient."

The rule, in equity, is that the *main facts* or *incidents* which constitute the wrong complained of, must be stated in a bill in equity, so as to put the defendants on their guard and apprise them of what answer may be required of them.

In *Magniac* v. *Thomson*, 2 Wall., Jr., 209, Mr. Justice GRIER said:

> "A court of equity, when examining a bill of complaint to find a grievance which will justify its interposition, looks to the substantive facts averred in it, not to the adjectives or adverbs which may be added to qualify them."

In *Van Weel* v. *Winston,* 115 U. S., 237-38, the court said of the bill there:

> "It is full of the words fraudulent and corrupt, and general charges of conspiracy in violation of trust obligations. Mere words, in and of themselves, and even as qualifying adjectives of more specific charges, are not sufficient grounds of equity jurisdiction, unless the transactions to which they refer are such as in their essential nature constitute a fraud or a breach of trust, for which a court of chancery can give relief."

This was followed in *Wood* v. *Amory,* 105 N. Y., 278, where Mr. Justice PECKHAM held, that if the act alleged were not in and of itself a fraud, it was not made so by alleging that it was induced by a desire to deceive and defraud the plaintiff; and, in *Hill* v. *Dyerville Mfg. Co.,* 116 Cal., 135, in which it was held, that general averments of fraudulent purpose were conclusions not admitted by the demurrer;—and, in *Horsford* v. *Gudger,* 35 Fed. Rep., 388, where it was held, that the bill must be specific in its statement of the facts; that a charge in general terms that a transaction was fraudulent is not sufficient, but the particulars must be set forth in detail; and that the things done or omitted, constituting the fraud, must be so stated upon the face of the bill that the court may see that they are fraudulent, if proved or admitted; and, in *St. Louis, etc., Ry. Co.* v. *Johnston,* 133 U. S., 577, where the language of the court in *Van Weel* v. *Winston,* is quoted and approved.

Mr. Daniell (1 Dan. Chan. Pldg. & Prac., 324), states the rule as follows:

> "That where it is necessary to allege fraud or collusion, a general allegation of it in the bill will not be sufficient to shut out a demurrer; but that the facts upon which such an allegation is founded

must be stated, as there is great inconvenience in joining issue upon such a general charge, without giving the defendant a hint of any fact from which it is to be inferred."

In *Moore* v. *Green,* 19 How., 69, the court held, that where fraud was alleged, the bill must be specific in stating the facts and circumstances which constitute the fraud; and that *this is necessary to enable the defendants to meet the fraud.*

In *Other* v. *Smithwaite,* L. R., 5 Eq., 437, 441, Sir W. Page Wood, Vice-Chancellor, said, that "nothing is more settled than the doctrine that when you charge fraud, you must state the facts upon which you allege fraud and prove it strictly."

Such words in the bill as "in violation of the provisions of an act of Congress," etc.—and "in order to restrain competition among themselves," and "in order to monopolize such trade and commerce," "have engaged in an unlawful combination and conspiracy to," etc., "which combination is in restraint of such trade and commerce," etc., cannot be relied on to make a case where, as here, the specific acts and facts alleged do not make one.

The jurisdiction of the court in equity under this act is limited to restraining *violations* of the act. Those violations are made crimes by the act, and obviously as rigid a rule requiring the *facts* constituting the criminal combination or conspiracy to be set forth, applies to the bill or petition as the rule applicable to an indictment or pleading at law or a bill in equity, charging fraud. In other words, the bill must set forth the *facts* constituting commission of the offense prohibited by the act as certainly as an indictment must do; and if these paragraphs of the bill would not be held sufficiently to

aver the commission of a crime, forbidden by this act, if they were in an indictment, then they do not show a violation of the act in this bill to restrain violations of the act.

In *Lawson* v. *Hewell,* 118 Cal., 613, a bill in equity was filed by a member of Masonic chapter to restrain the trial within the order of plaintiff upon certain charges, and alleged that the adoption of the rule which he was charged with violating was the result of a conspiracy among defendants, and invalid, and that charges against him and the proceedings taken for their investigation were a part of the conspiracy and in furtherance of its objects; and in holding that a demurrer to the bill was properly sustained, the court say of the conspiracy charge:

> "The charge, moreover, is made in general terms, and without any specifications of fact from which a conspiracy can be inferred."

In the *Addyston Pipe Company case,* 175 U. S., 245 (which was a bill or petition in equity, as this is), the court held that *all the facts and circumstances are to be considered in order to determine the fundamental question, whether the necessary effect of the combination is to restrain interstate commerce.*

In that case, and in every other case in which a bill or petition in equity under this act has been sustained, the facts have been alleged and there has been alleged and shown to the court as a fact the full terms of a distinct and express agreement, which, as construed by the court, was a violation of the act. But in this case, for the first time, the Government asks the court to condemn defendants upon mere charge and epithet without the allegation or proof of any facts showing any violation of the act.

2. THE DECREE OF INJUNCTION IS ERRONEOUS ON LIKE GROUNDS OF INDEFINITENESS. A DEFINITE AND VALID DECREE COULD NOT BE ENTERED UPON THE BILL.

The decree which is here complained of, and which the learned counsel for the Government procured to be entered upon their bill, makes clear the misconception of the Sherman act, upon which the bill and decree were drawn.

Indeed, it is earnestly but respectfully suggested that the bill and decree here appear to proceed upon the theory that Congress, by the Sherman act, has delegated to the Federal court in equity, as soon as the Government should file this general petition asking it, the regulation for all future time of the trade and commerce carried on by these defendants. An examination of the bill and decree will disclose the remarkable situation that by this suit the Federal court has undertaken, without any limit of time, the regulation of the future conduct of industries and trade, which, according to the allegation of the bill, amounts to about 60 per cent. of the total volume of the trade and commerce among the States and Territories in fresh meats. If this decree is to stand, then are each and all of the multitude of transactions which defendants may have, at any time in the future, in that great business, to be done under the watchful eye and supervision of the Federal court, which has undertaken to see to it that in none of these future transactions shall its general injunction not to violate the Sherman act be violated by defendants without their suffering the penalty for contempt of its decree and dignity? Obviously, such a power or function was never intended to be imposed on the Federal courts by the Sherman act.

We conceive that it is to be here taken for granted that in the exercise of the equitable jurisdiction under Section 4 of the Sherman act, which is here invoked, the modes of proceeding to be pursued are those which have been followed in the Federal courts from the beginning, and which were laid down in the judiciary act of May 8, 1792, viz.: that they should be "according to the principles, rules and usages which belong to courts of equity, as contradistinguished from courts of common law" (1 Stat. at Large, 276), and which are prescribed by Rule 90 of the Equity Rules.

With respect, we submit that the learned counsel for the Government, on the other hand, have presented and prosecuted this case on radically new and erroneous lines, which assume that under the Sherman act, not only is a novel jurisdiction and power conferred on the Federal courts in equity, but in the exercise of it the courts are not governed by the principles and rules governing them in other cases.

Let us see:

The decree merely adds the injunction of the court to the prohibitions of the act of Congress, and in terms almost as general and indefinite. It does not condemn or enjoin the making or carrying out of any specific contracts; indeed, there was none alleged or shown which could be made the basis of such a judgment. The decree in effect merely repeats the prohibition of the act of Congress. It enjoins the defendants "from entering into, taking part in or performing any contract, combination or conspiracy, the purpose or effect of which will be as to trade and commerce in fresh meats between the several States and Territories and the District of Columbia, a restraint of trade in violation of said act of Congress of

July 2, 1890," by doing either of several specified things, "or by any other method or device, the purpose and effect of which is to restrain commerce as aforesaid." (Trans., 37-38; *supra*, pp. 11-12.)

And again the defendants are further enjoined "from violating the provisions of said act by combining or conspiring together, or with each other and others, to monopolize or attempt to monopolize any part of the trade and commerce in fresh meats among the several States and Territories and the District of Columbia," by doing certain other specified things (*ibid*).

The specified things which are mentioned in the decree as the "methods or devices" by means of which the forbidden contracts, combinations or conspiracies are made or performed, are not what are enjoined. There is no condemnation of them except as the defendants shall thereby make or carry out the contracts, combinations or conspiracies in violation of the Sherman act which are enjoined. The contracts, combinations and conspiracies which are enjoined are, in general terms, any which, in purpose or effect, will be a restraint of interstate trade, in violation of said Act of July 2, 1890.

If this decree shall stand, who shall hereafter regulate the conduct of defendants' business? Shall they, or shall the Federal court in equity? Who shall regulate the interstate trade and commerce which they may carry on? Is it to be subject to regulation by Congress or by the court?

Again, such an injunction or injunctional order as is here presented is against all precedent or rule. In *Whipple* v. *Hutchinson*, 4 Blatchf., 190, it was held by Mr. Justice Nelson that a writ of injunction, as a general rule, ought to contain a concise description of the par-

ticular acts or things in respect to which the party is enjoined, so that there may be no misapprehension on the subject.

In *Robinson* v. *Clapp,* 65 Conn., 365, the court held that the person enjoined is entitled to know with a reasonable certainty what acts he may and may not do without making himself liable as in contempt of an order.

In *Laurie* v. *Laurie,* 9 Paige, 234, 235, the chancellor held the rule to be that the language of the injunction should in all cases be so clear and explicit that an unlearned man can understand its meaning, without the necessity of employing counsel to advise him what he has a right to do in order to save him from subjecting himself to punishment for a breach of the injunction.

It could be no answer to the point here made against the decree to say that upon the allegations of this bill no more specific decree could have been entered. That only makes more obvious the insufficiencies of the bill. It shows that under our system of jurisprudence no such general, indefinite and omnibus case can be sustained, as is here for the first time attempted under the provisions of the Sherman act.

The bill of complaint here seeks now absolutely to interfere, and the decree in general terms does interfere, with future dealings, as interstate commerce, which at most may be interstate trade or domestic trade, according to the future and changeable intention of the dealer.

Neither the Sherman act nor the commerce clause of the Constitution authorizes such interference.

The alleged combinations and conspiracies of defendants which are charged in the bill of complaint, as they

are there charged, are not confined to interstate dealings, but have to do as well with their transactions which are wholly within a State, and which Congress has no power to regulate. The bill does not set forth *any distinct* or *specific agreement,* which by its terms contemplates and involves interstate trade, or the performance of which in interstate trade is sought to be enjoined—as was the fact in each of the cases heretofore decided. The decree here does not enjoin any such specific agreement, but merely enjoins violation of law. As to each of their future dealings the character thereof will be determined by the future and changeable intentions of the dealers. Some or none of them may be interstate trade. Defendants may take their fresh meats into any State and there sell them as articles of domestic trade, so that if their future dealings shall be interstate it will be at their election at the time. At most, a part only, and not the whole, will be interstate.

We understand that this court has in effect held, or that its reasoning sustains the proposition, that where the future trade and dealings of defendants (which, if interstate, would be in restraint of trade or an attempt to monopolize trade and commerce) may be interstate or domestic trade, according to their future and changeable intention, the Sherman act does not authorize a Federal court to enjoin generally so much thereof as may be or turn out to be interstate trade or commerce.

In *United States* v. *E. C. Knight Co.,* 156 U. S., 15, quoting from *Kidd* v. *Pearson,* it is said:

> "Even in the exercise of the power contended for, Congress would be confined to the regulation, not of certain branches of industry, however numerous, but to those instances in each and every branch where the producer contemplated an interstate market.

> These instances would be almost infinite as we have seen; but still there would always remain the possibility, and often it would be the case, that the producer contemplated a domestic market. In that case the supervisory power must be exercised by the State; and the interminable trouble would be presented, that whether the one power or the other should exercise the authority in question would be determined, not by any general or intelligible rule, but by the secret and changeable intention of the producer in each and every act of production. A situation more paralyzing to the state governments, and more provocative of conflicts between the general government and the States, and less likely to have been what the framers of the Constitution intended, it would be difficult to imagine."

It is submitted that the same "interminable trouble" would be here presented as to the future trade and commerce with which this decree in general terms interferes.

II.

THE BUSINESS OF DEFENDANTS OF PURCHASING LIVE STOCK TO SLAUGHTER FOR THE PRODUCTION OF FRESH MEATS, AND OF SELLING SUCH FRESH MEATS, AS DESCRIBED IN THE FIRST, SECOND AND THIRD PARAGRAPHS OF THE BILL, IS NOT SHOWN TO BE INTERSTATE OR FOREIGN COMMERCE.

In separate paragraphs, numbered first, second and third, the bill alleges different kinds of business, in which the respective defendants are engaged. If these different kinds of business, respectively, as there alleged and described, are not interstate commerce, we contend that the bill does not allege any violation of the Sherman Act. And we submit that none of the business there described

is shown by the facts alleged to be interstate commerce.

In the *first* paragraph the bill alleges that defendants are engaged in the business of buying live stock, to wit, cattle, sheep and hogs, at divers stock yards, and such like open and competitive markets, at divers places therein named, and slaughtering such live stock *at their respective plants at those places,* and *there* converting the said live stock into fresh meat for human consumption (Trans., 4-5.) That paragraph does not allege or show that the live stock so purchased are articles of interstate commerce or that the purchases are interstate commerce. Clearly that business, as there alleged, is not in any way there shown to be interstate or foreign commerce. *United States* v. *E. C. Knight & Co.,* 156 U. S., 1; *U. S.* v. *Boyer,* 85 Fed. R., 425, 435; *Hopkins* v. *United States,* 171 U. S., 592.

In the *second* paragraph it is alleged that defendants are engaged in the business of selling such fresh meats, *at the several places where they are so prepared,* to dealers and consumers in divers other States and Territories and in the District of Columbia and in foreign countries, and shipping the same meats, when so sold, from the said places of their preparation, over the lines of railroad companies, to such dealers and consumers, pursuant to such sales.

The business of selling such fresh meats so there shown is alleged to consist of sales "at the several places where they are so prepared"; and is not interstate commerce. The sales and deliveries here alleged are made and fully completed in the State and at the place where the meats are so prepared. The sales and deliveries, as here alleged, are fully completed at the time of the deliv-

ery of the goods to the carrier at the place of sale, to be forwarded to the buyer. *Merchant* v. *Chapman,* 4 Allen, 362; *Orcutt* v. *Nelson,* 1 Gray, 543; *Waldron* v. *Romaine,* 22 N. Y., 368; *Ramsey & Gore Co.* v. *Kelsea,* 55 N. J. L., 320.

The rule is clearly stated in *Merchant* v. *Chapman, supra* (4 Allen, 364), as follows:

> "It is a well known rule in the law of sales that a delivery of goods to a carrier designated by the purchaser is of the same legal effect as a delivery to the purchaser himself. So (unless there is an agreement to the contrary) is a delivery by the seller to a common carrier, in the usual course of business, although no carrier is named by the purchaser."

The ground of this rule is that the carrier is to be treated, with respect to such delivery and transportation, as the agent of the purchaser. The "shipping the same meats, when so sold, from the said places of their preparation, over the several lines of transportation of the several railroad companies serving as common carriers, to such dealers and consumers, pursuant to such sales," as here alleged (Trans., 5), does not then make the sales interstate commerce. Where, by the contract of purchase, the goods are to be so delivered by the seller to a carrier to be transported to the purchaser, the carrier is the purchaser's agent; and the delivery is then to the purchaser's agent, and the sale and delivery are fully completed upon delivery to the carrier at the place of manufacture and sale, with like effect as if delivered to the purchaser at that place. 2 Kent Com., 499; *Cotte* v. *Harden,* 4 East, 211; *Brown* v. *Hodgson,* 2 Campb., 86; *Groning* v. *Needham,* 5 Maule & S., 189; *Orcutt* v. *Nelson,* 1 Gray, 543; *Merchant* v. *Chapman,* 4 Allen, 362, 364.

The sales then described in the second paragraph of the bill are not interstate commerce. *Crossman* v. *Furman*, 192 U. S., 189, 199.

The carrying of the merchandise to the depot of the common carrier (if the allegation of the bill here referred to is to be construed as alleging that that is done by the sellers), is no part of interstate transportation or commerce, and does not make the goods as yet the subject of interstate commerce. In *Coe* v. *Errol*, 116 U. S., 517, 528, the court held that they are yet "part of the general property of the State," and said:

> "And so we think they continue to be until they have entered upon their final journey for leaving the State and going into another State. It is true it was said in the case of The Daniel Ball, 10 Wall., 557, 565: 'Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the states has commenced.' But this movement does not begin until the articles have been shipped or started for transportation from one State to the other. The carrying of them in carts or other vehicles, or even floating them, to the depot where the journey is to commence, is no part of the journey. * * * Carrying it from the farm, or the forest, to the depot is only an interior movement of the property, entirely within the State, for the purpose, it is true, but only for the purpose, of putting it into a course of exportation; it is no part of the exportation itself."

The fact that the sale is made with a view to the goods being transported to another State after the sale should have been fully completed does not make the sale interstate commerce. *Kidd* v. *Pearson*, 128 U. S., 1, 23-24; *U. S.* v. *E. C. Knight Co.*, 156 U. S., 1, 13-17.

The charge in the second paragraph of the bill that "in so doing," *i. e.*, in doing the acts therein alleged, the

defendants are engaged in interstate commerce, is a mere conclusion of the pleader from the facts alleged, and does not make them so, if the acts done as alleged are not themselves interstate commerce. *United States* v. *E. C. Knight Co.*, 156 U. S., 1.

In the *third* paragraph, the bill alleges that defendants are engaged in the business of shipping fresh meats from the point where prepared over the lines of common carriers *to their own agents* in other States and Territories, and in the District of Columbia and in foreign countries, for sale by those agents, at the places where said agents so are, and that defendants have been and are through those agents there selling the same to dealers and consumers.

Now, the only transaction referred to in said third paragraph, which involves interstate or foreign commerce, is that of the transportation, and that is entirely a matter between the defendant, shipping to his own agent, and the carrier; and it is entirely unconnected with any subsequent sale by such agent; and is is altogether at an end when the articles shipped are received by the agent of the shipper to whom they are consigned. Any subsequent sale by such agent is not interstate or foreign commerce under the allegations of this bill, and for the purpose of this case. The fact that the owner made such shipments to his own agent, in order that his agent should there sell the articles, does not make the sales interstate commerce, or make any difference with respect to the status or character of the property as the subject of such a sale thereof as is here alleged. *Coe* v. *Errol*, 116 U. S., 517, 525, 526; *Kidd* v. *Pearson*, 128 U. S., 1, 23-24; *United States* v. *E. C. Knight*, 156 U.

S., 1, 13-17; *Austin* v. *Tennessee,* 179 U. S., 343; *Am. Harrow Co.* v. *Shaffer,* 68 Fed. Rep., 750; *Stevens* v. *Ohio,* 93 Fed. R., 793.

The allegation of the bill here, that the shipments from the place of manufacture to the shipper's own agents in other States are for sale there by such agents to dealers and consumers, does not imply that the sales by the agents are interstate commerce. It is not only altogether consistent with, but implies that such sales are there domestic sales. The sales mentioned in the bill are alleged to be to dealers and consumers. They are not alleged to be in "original packages." On the contrary, the bill shows they are not. The shipments being to their agents who are "located at or near the principal markets for such meats," are in large "original packages" to supply many customers, *e. g.,* in carloads. The sales by the agents, being "to dealers and consumers," are in smaller lots. And it is to be here taken, under the allegations of this bill here referred to, that on the receipt of the meat by the shipper's agent, it is made ready and kept for domestic sales to consumers and dealers,—*i. e.,* that before it is sold, the bulk is broken up, and it is placed in the owner's warehouse or store for sale therefrom in separate parcels, and so that the merchandise before the sale to dealers or consumers, "had come to its place of rest for final disposal or sale, and so a commodity in the market," where sold. And so, under these allegations, it is to be taken that at the time of sale, it "had become a part of the general property in the State," and is there handled and sold as such. In other words, this case is the case decided in *Pittsburg Southern Coal Co.* v. *Bates,* 156 U. S., 577, 588-9; *Brown* v. *Houston,* 114 U. S., 623, 632-3; *Emert* v. *Mis-*

souri, 156 U. S., 296, 310; *Singer Mfg. Co.* v. *Wright,* 97 Ga., 123, which settle the point that the sales referred to in said third paragraph of the bill herein, as they are there described, are domestic sales and not interstate trade or commerce.

The point here made, that these sales described in the bill are not, by the facts alleged, shown to be interstate or foreign commerce, is not touched or affected by the point decided in *Brown* v. *Maryland,* 12 Wheat., 419, and other later cases, that one who transports an article from one State to another for sale, *has a right,* which cannot be interfered with by state regulation, to sell it as an article of interstate commerce. He also has a right (not to be prohibited by federal legislation) to make such article a part of the general property of the State, and sell it as an act of domestic commerce. This bill seeks to interfere with that right. There is a constitutional right of private citizens to sell or buy and deal with and treat an article brought from one State into another, either as an article of interstate commerce or as an article of intra-state or domestic commerce, which cannot be denied either by state or federal law. It is, as we conceive, the same right, or of the same nature, as that referred to by the court in the *Hopkins case,* where it is said:

> "What a State may do is one thing, and what the parties may contract voluntarily to do among themselves is another thing." (171 U. S., 603.)

Indeed, a state law might be invalid as an interference with interstate commerce because it invaded the right of the owner at his option to keep and sell an article as an act of interstate commerce; and at the same time a federal statute might be equally invalid which interfered with his right at his option to sell the same article as an

act of domestic commerce. Not only the right of private contract (which is to be favored and not discountenanced), and the freedom of contract, but the freedom of trade and commerce (which it is the purpose of the Sherman Act to promote) may reasonably prevent present regulations of such right in anticipation of its actual exercise. The trouble with the bill here is that it seeks to interfere with transactions which the facts alleged do not show to be interstate commerce. It seeks now absolutely to interfere with future transactions, as interstate commerce, which may be interstate or domestic commerce, at the will of the dealer. Neither the Sherman Act nor the commerce clause of the constitution, authorizes any such interference, as we have shown (*supra,* pp. 39-40).

The question here (to state it most favorably for complainant) is, what is the sale described? Does the bill here (as it must) clearly show, by the facts alleged, that the sales described are interstate commerce? We assert not.

The line of decisions holding that certain state or municipal laws are invalid as regulations of interstate commerce, which purport to impose taxation, license requirements or other regulations, upon sales of, or the right to sell, products of other States, where it is apparent (*e. g.,* from the *discriminating* character of the law in question), that the purpose thereof was thereby to *exclude* the introduction into the State of such article and the right of interstate commerce therein, or so burden the bringing of such article into the State for sale or the sale thereof, as to interfere with the owner's constitutional right to sell as interstate commerce, and to prevent interstate commerce therein,—have no application here. Among such cases are *Welton* v. *Missouri,* 91 U. S.,

465; *Walling* v. *Michigan,* 116 U. S., 446; *Minnesota* v. *Barber,* 136 U. S., 313; *Brimmer* v. *Rebman,* 138 U. S., 78; *Schollenberger* v. *Pennsylvania,* 171 U. S., 24-25, and *Brown* v. *Maryland.*

Thus the business in which it is alleged in the bill defendants are engaged, is not shown by the facts alleged to be interstate or foreign commerce, but domestic commerce.

The trade and commerce referred to in the *fourth* and *fifth* paragraphs of the bill add nothing to the previous allegations as to the nature of the business or trade described; and it does not change the character of that business, as it is shown to be by the facts alleged in the bill, or make it interstate or foreign commerce where the facts alleged do not so make it, merely to designate it as trade and commerce among the States or Territories and the District of Columbia and with foreign nations, or to charge it to be so.

III.

THE BILL OF COMPLAINT DOES NOT SHOW ANY CONTRACT, COMBINATION OR CONSPIRACY IN RESTRAINT OF INTERSTATE TRADE OR COMMERCE, WITHIN THE MEANING OF SAID ACT OF CONGRESS.

THE BILL OF COMPLAINT DOES NOT ALLEGE ANY ACTS OF DEFENDANTS MONOPOLIZING, OR ATTEMPTING TO MONOPOLIZE, OR COMBINING OR CONSPIRING TO MONOPOLIZE ANY PART OF SUCH TRADE OR COMMERCE WITHIN THE MEANING OF SAID ACT.

IF THE ACT OF CONGRESS IN QUESTION SHOULD BE GIVEN A CONSTRUCTION WHICH WOULD SUSTAIN THIS BILL OF COMPLAINT, SUCH ACT WOULD VIOLATE THE PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES.

The different acts charged to be violations of the Sherman Act are set forth in the sixth, seventh, eighth, ninth, tenth and eleventh paragraphs of the bill of complaint; and they are different and distinct causes of action. It is not possible to treat together, or as one cause of action, the different and unconnected acts which are claimed to constitute the several alleged offenses referred to respectively in these paragraphs of the bill. The first alleged offense (in the sixth paragraph) has no sort of connection with or relation to the second one (set up in the seventh paragraph), or with any of the others, nor has any one any connection with or relation to any other.

The bill is bad on demurrer for multifariousness and misjoinder. It alleges five or more different and unconnected offenses.

That point, however, will be dealt with further on. Here we beg to urge that neither of these paragraphs alone, nor all together, charge any violation of the Sherman Act. Let us see:

1. The alleged offenses charged in the sixth and seventh paragraphs.

In the *sixth* paragraph of the bill a combination and conspiracy of defendants is alleged for directing and requiring their respective purchasing agents at said stock yards and such like open and competitive markets where they customarily purchase live stock (to wit: the places mentioned in the first paragraph), to refrain from bidding against each other except perfunctorily, for live stock (the same being live stock produced and owned principally in other States and Territories and shipped by the owners to said stock yards for competitive sale to persons and corporations engaged in producing and dealing in fresh meats in the manner aforesaid); and by this means inducing and compelling owners to part with such live stock at less prices than they would receive if such bidding were really competitive; and that defendants have caused and are causing their agents respectively to refrain from bidding accordingly, and have induced and are inducing each other, and will, unless restrained, continue, in pursuance of such conspiracy, to induce each other to refrain from bidding as aforesaid. (Trans., 5-6.)

In the *seventh* paragraph a combination of defendants is charged for the converse purpose of bidding up the prices of live stock at such stock yards, through their respective purchasing agents, for a few days at a time, so that the market reports will show higher prices than the state of

the trade will warrant, and thereby inducing owners of such live stock in divers States and Territories to make simultaneously large shipments to such stock yards and markets instead of shipping to more natural and advantageous markets and at more natural and advantageous times, and by reason of resulting large offerings (and by thereupon refraining from bidding against each other for the same) obtaining such live stock at less prices than it would bring in the regular way of trade; and it is charged that defendants have been, and are, through their said agents, so fraudulently bidding up prices of such live stock, and will, unless restrained, continue so to do. (*id.*, 6-7.)

We submit that, taking the allegations of the bill, either by themselves or in connection with other facts as to trade and commerce which are matters of common knowledge, and in view of which the bill is to be construed, and drawing the fair inferences, these remarkable charges allege no violation of the Sherman Act.

It appears from the bill that the purchase of live stock by the respective defendants are made for the purpose of slaughtering the live stock and converting it into fresh meat for human consumption, at the points where the live stock is purchased. and selling such fresh meat at the places where they are so prepared, to dealers and consumers in divers state and territories and in foreign countries. (Trans., 4-5.) The demand from day to day for such fresh meats is for present consumption, and is a constant demand, and must be of substantial uniformity. In other words, the respective defendants, in buying their live stock and converting the same into fresh meat, do so in view of and to supply a demand for fresh meats,

the extent of which may be practically known to or judged of by them, but is not created or controlled by them. It is obvious that they cannot create a fictitious demand for their fresh meats, which are a perishable commodity and must be disposed of for consumption very shortly after the live stock is slaughtered. And so, for the same reason, they cannot create a fictitious demand or materially lessen the normal demand for the live stock required to be slaughtered to supply such demand for their fresh meats.

The live stock is bought by them for immediate slaughter, as their present needs require. Practically, then, they cannot buy substantially more, or fail to buy substantially less, live stock, than they believe the demand upon them for fresh meats for their trade requires. This business is not a speculative business, but with a known output and demand for fresh meats they buy and slaughter so much live stock from day to day as will supply that output.

As against each other, their business is necessarily competitive, both in getting customers for their output and in buying live stock with which to supply those customers. In the nature of things, that competition cannot be destroyed or materially lessened by them. Increase of business of one means less business for others.

These extensive packing establishments of the different defendants are capable, respectively, of slaughtering, from day to day, each a certain quantity of live stock. They cannot slaughter more than their capacity, and they cannot, without loss, slaughter less than will keep their large plants and forces of employes substantially occupied; and they cannot, without loss, buy from day to day much in excess of their then needs, and carry over and feed and care for quantities of live stock which are not required

by them for immediate slaughter. The enormous carrying charges, yardage, care and feeding of the stock in the yards of the stock yards companies evidently forbid that. The business is a cash business,—the defendants buying and paying in cash for the live stock as bought.

The supply of live stock, on the other hand, is much more variable, and this is strikingly so with respect to seasons or times at which it is in condition for the market. This gives rise to variations in the market value, depending upon the variable supply of live stock ready for the market at different seasons or times, as compared with the more uniform and steady demand for fresh meats.

It is evident that, by reason of the above facts, the power of the defendants (except at great loss to themselves) to bid up or down the prices of live stock is insignificant. This would be evidently true if they were the only purchasers. But it appears from the bill that about forty per cent. of the trade and commerce in fresh meats among the states and territories is in the hands of other persons who are purchasing live stock and slaughtering it and selling fresh meat in competition with each of the defendants. (Trans., 5.) There is nothing in the nature of a natural monopoly in the business; the field is an open one; any other persons are free to enter it; and so the amount of the trade in the hands of others than defendants may at any time become seventy-five or ninety per cent. of the entire amount.

Again, it is said in the *seventh* paragraph of the bill, that there are "more natural and advantageous markets" for such shippers, than the markets at which the defendants purchase live stock. (Trans., 7.) It is obvious,

then, and is of common knowledge, that the "market reports" of such high prices of live stock there alleged to be offered by defendants, will reach and influence such other "more natural and advantageous markets" sooner than, or at least as soon as, they reach the live stock owners on their ranches and farms, and the prices at all the markets will be uniform. The defendants could not bid up prices for a few days at a time at the markets at which they purchase, without a corresponding increase in the prices at the more natural and advantageous markets for the shippers which are referred to; and so the defendants could not thereby expect to draw from such other markets live stock which would naturally or more advantageously go there. It is obvious, too, that the defendants could not, to their own profit, bid up prices beyond those required by the then actual demand in order to induce excessive shipments of more live stock than they could advantageously slaughter upon their purchase.

The bill, which is meager in its allegations of fact, is to be construed in view of other facts of common knowledge as if they were also alleged; and while, for the purpose of this hearing, the material allegations of fact in the bill, which are well pleaded, are to be taken as admitted upon the demurrers, the demurrers do not admit the soundness of legal conclusions charged in the bill.

The use of the word "bidding" in the sixth and seventh paragraphs of the bill, is not to be construed as an allegation that these sales of live stock are at any public vendue to the highest bidder. They are private sales made in the numerous pens in which the live stock is yarded, upon an inspection of their condition, grade and quality by the buyer, and are like the sales of goods in a shop over the counter, where the prices are fixed by the

seller, or by agreement of the two persons, buyer and seller.

As to these dealings, as they are alleged in the bill, we maintain:

1. *The purchases of live stock referred to in the sixth and seventh paragraphs of the bill, as therein alleged, are not interstate commerce.*

These purchases are alleged to take place at certain stock yards and such like markets, at which are situated the slaughtering houses of the respective defendants who make such purchases of the live stock for slaughter at their houses there. (Trans., 4, 5-6.) The first paragraph in which the business of defendants in buying live stock is alleged, as we have shown (*supra*, p. —), does not allege or show it to be interstate commerce. (Trans., 4-5.) The sixth paragraph describes the live stock there referred to as being live stock produced and owned principally in other states and territories of the United States, and shipped by the owners thereof to such stock yards and open markets for competitive sale to persons and corporations engaged in producing and dealing in fresh meats in the manner aforesaid (*id.*, 6). But this neither alleges, nor tends to show, that the sales, so contemplated and made after the live stock have so reached the state in which they are sold and delivered, as is here alleged, are interstate sales or trade. It is not alleged the purpose of the owners is to sell or of the defendants to buy the live stock as an article of interstate commerce. On the contrary, it is to be taken from these scant and cautious allegations that the live stock, when it is so offered for sale, has become part of the general mass of property of the state where it is sold. *Brown* v.

Houston, 114 U. S., 622, 632-33; *Pittsburgh Coal Co.* v. *Bates,* 156 U. S., 577, 588-89; *Emert* v. *Missouri,* 120 U. S., 489, 497; *Diamond Match Co.* v. *Ontonagon,* 188 U. S., 82, 92-97.

> "The property is at rest for an indefinite time, awaiting sale at its place of destination." (188 U. S., 95-96.)

Clearly, the sales and deliveries of such live stock (which are altogether made in that state and at the place where both the live stock sold and the purchaser and his slaughter house are) are not to be taken as interstate commerce, in the absence of distinct allegations and showing to that effect, but, under these allegations, they are to be taken as intra-state or domestic purchases.

There are no other allegations of fact in the bill than those above referred to which tend to show that the trade referred to in the sixth paragraph is interstate commerce; and we submit that, for this reason, no case is made in that paragraph of a violation of the Sherman Act.

All this is equally true of and applies to the seventh paragraph. (Trans., 6-7.) The trade there referred to is not interstate commerce, under the allegations of the bill.

If we assume that the lack of any sufficient allegations or showing of facts, that the trade referred to in the sixth and seventh paragraphs is interstate commerce, may be supplemented by other actual facts as to this trade, as being matters of common knowledge, the case of the learned counsel for the Government is no better off. In the *Anderson case, supra,* the question whether the purchases by the defendants there on their own account at the Kansas City stock yards, of cattle owned in and shipped there from other states and territories for sale,

as they were there shown, were interstate commerce, was raised, but not decided. (171 U. S., 614-15.) In the *Hopkins case,* it was held that the commission merchants, who sell the cattle consigned to them from other states, and who, in order to secure the business, send their agents into such other states to the owners to solicit the business, and lend money to the cattle owners upon mortgages upon the cattle and make advances of a portion of the purchase price of the shipments of cattle to them to be sold, by the payment of drafts drawn upon them by the owners in other states at the time of the shipment,—are not engaged in interstate commerce. (171 U. S., 587-92.) The facts so to be taken notice of are these:

The live stock so sent to these stock yards for sale is consigned to commission merchants, such as those who were defendants in the *Hopkins case.* Under the allegations of this bill it is to be taken that upon the arrival of the cattle they are divided up and distributed in the pens of the stock yards and commingled with the general mass of other property of the state. They are then yarded, cared for, fed and watered by the stock yards company for hire, until they are sold; and they are there sold by the commission merchants, who are the only persons known to the defendants, and who sell the live stock and collect the proceeds as principals or owners of the cattle, and who, according to the decision of the *Hopkins case,* are not engaged in interstate commerce. When bought by any of the defendants, they are, according to the allegations of the bill, bought for the purpose of being slaughtered and converted into fresh meat by the defendants at that same point. (Trans., 4, 5.) The alleged restraint of trade or competition in the sixth and

seventh paragraphs of the bill complained of, are "as to the purchase of live stock necessary to the production of the meats produced by them." (*id.*, 5, 6.)

In *Brown* v. *Houston*, 114 U. S., 622, it was held that coal mined in Pennsylvania and sent by water to New Orleans to be sold in open market there on account of the owners in Pennsylvania, becomes intermingled *on arrival there* with the general property in the State of Louisiana, although it may be, after arrival, sold from the vessel without being landed and for the purpose of being taken out of the country on a vessel bound for a foreign port. Now, if that property had become so intermingled with the general property in the state, how is it with the cattle here in question when the carloads are so broken up and the cattle placed in new combinations in the pens of the stock yards for sale, by commission merchants who sell the cattle as their own, but are not themselves engaged in interstate commerce? If the coal in the vessel of the shipper had ceased to be the subject of interstate commerce and subject to taxation by the state, clearly the cattle held in the pens of the stock yards had ceased to be articles of interstate commerce, and are so situated that defendants, who were buying for slaughter at that point, have *the right* to buy such cattle as articles of domestic commerce. If the State of Louisiana could subject to taxation, as part of the general property of the state, the coal shipped by the owners at Pittsburg in their own barges to Baton Rouge for sale there, even while in the original barges in which it was shipped, as held in *Pittsburg & Southern Coal Co.* v. *Bates*, 156 U. S., 577, clearly any of the defendants here had as much right to regard and to deal with and purchase, and agree together to purchase or not to purchase,

as articles of domestic commerce, any cattle held and found by them in the pens of the stock yards of Kansas City or Chicago.

The case of the Government here requires a clear showing, by allegations of fact, that this live stock was, and remained at the time of defendants' dealings with respect thereto, an article of interstate commerce, *and that they so treated and dealt therewith.*

In *Emert* v. *Missouri,* 156 U. S., 296, it was held that where goods were sent by the Singer Company, in New Jersey, to its own agent in Missouri for sale there, and such agent travelled about and offered such goods for sale in pursuance of such shipment, a statute of the State requiring such peddlers of goods to take out and pay for licenses was not a regulation of interstate commerce; and it was said, quoting from the opinion in the *Robbins case,* 120 U. S., 489, 497:

> "When goods are sent from one State to another for sale, or in consequence of a sale, they become part of its general property and amenable to its laws; provided that no discrimination be made against them as goods from another State. * * * 'The negotiation of sales of goods which are in another State, for the purpose of introducing them into the State in which the negotiation is made, is interstate commerce.'"

The *Emert case* last cited emphasizes the point we suggested above, that cases where State regulations have been held to be *invalid* as an interference with interstate commerce because *discrimination* is thereby made against goods as goods from another State stand upon a distinct ground, and are not applicable here.

The learned counsel for complainant cannot take the case at bar out of the application of the cases above

cited. Indeed, this case, so far as based upon the sixth paragraph of the bill here in question, is strikingly similar, in principle, to those cases. Property subject to taxation as domestic property is subject to purchase as domestic property. And when property is so circumstanced in a State, that it is not the subject of interstate commerce when the State seeks to tax it, or that dealings therein are not interstate commerce when the State seeks to license those dealings—then, obviously, citizens of that State seeking there to buy the property so situated, may deal with it as domestic property of the State. The question in those cases cited was as to the power of the State to treat property brought into the State or to regulate the transactions therein. The question here is as to the right of private citizens engaged in business in the State to buy property brought into the State, as domestic property, after it is so brought in and is there offered for sale, and their right, by their mutual agreements with each other, to treat and regulate their own purchases thereof, as domestic commerce.

The court in the *Hopkins case* (171 U. S., 578, 590), in remarking that "the selling of an article at its destination, which has been sent from another State, may be regarded as an interstate sale," did not hold that purchases, such as are alleged to be made by defendants in the sixth paragraph of the bill, are interstate commerce. Issues were made in that case, and the contention made by the defendants in their answer was that the exercise of their occupation as commission merchants did not constitute or amount to interstate commerce (p. 583); and this was sustained by the court. There was no question made with respect to the character of the sale, and the court held that that was "not the substantial factor in the case." (p.

588.) The selling of such article at its destination which has been sent from another State, may or may not be an interstate sale; but whether it was or not was immaterial in the *Hopkins case*, because even if the sales were interstate commerce, the business of defendants was not interstate commerce.

There is a clear distinction between a contract or combination of sellers, with respect to their contracts, which include, in one undertaking, the sale in one State of an article and (as a part of such sale) the transportation of the article for and delivery by the seller to the buyer in another State, and a mutual contract or combination of local buyers, buying for local consumption or use, articles already in the State when purchased. The mutual contracts of such local buyers with each other, respecting such purchases, are quite a different thing, with respect to the application of the Sherman Act, from such a combination of shippers.

2. *But if these purchases of cattle are interstate commerce, the acts alleged in the sixth and seventh paragraphs are not violations of the Sherman Act.*

They are merely acts of defendants in the conduct of their own business, much more strictly so than were the contracts and combination of the yard traders which were upheld in the *Anderson case*. It is not alleged that they in the least assume to control or affect the conduct of any other persons than themselves, as was done in the case last cited. It is not alleged that sales are lessened, or that that is the necessary effect of defendants' acts, as was the fact in the *Anderson case*. It is not alleged that, as a result, unreasonable prices for cattle are fixed or sought to be secured. It is not alleged or

shown that any injury to the public will result; or that commerce will be directly, immediately or necessarily restrained by the acts charged. This case of the Government is not nearly as strong in that respect as that made against the traders in the *Anderson case* last cited. The agreements and acts there were regarded as within the constitutional right of private contract.

Upon this point, this court said in the *Hopkins case* (171 U. S., 591):

> "Even all agreements among buyers of cattle from other States are not necessarily a violation of the act, although such agreements may undoubtedly affect that commerce."

A striking application of this rule was made in the *Anderson case,* where the decision proceeded upon the assumption that the dealings of the defendants were interstate commerce (171 U. S., 615); and where the mutual agreements of the defendants (members of the Traders' Live Stock Exchange) were definite agreements with each other, the effect of which was that they would not purchase cattle from, but would boycott, commission merchants who sold cattle to other traders and speculators who were not members of defendants' Exchange. (*Id.,* 608-9, 614.)

In the *Joint Traffic case,* 171 U. S., 568, the Supreme Court say:

> "An agreement entered into for the purpose of promoting the legitimate business of an individual or corporation, with no purpose to thereby affect or restrain interstate commerce, is not, we think, covered by the act, although the agreement may indirectly and remotely affect that commerce."

An in the *Hopkins case,* 171 U. S., 592, the court again said:

"The statute applies only to those contracts whose direct and immediate effect is a restraint upon interstate commerce. * * * The effect upon interstate commerce must not be indirect or incidental only."

And again (pp. 602-3) the court say of the right of dealers to agree together to restrict their operations:

"We say nothing against the constitutional right of each of the defendants and each person doing business at the Kansas City stock yards to send into distant states and territories as many solicitors as the business of each will warrant. This original right is not denied or questioned. But cannot the citizen, for what he thinks good reason, contract to curtail that right? To say that a State would not have the right to prohibit a defendant from employing as many solicitors as he might choose, proves nothing in regard to the right of individuals to agree upon that subject in a way which they may think the most conducive to their own interests. What a State may do is one thing, and what the parties may contract voluntarily to do among themselves is quite another thing."

And so here, the alleged mutual agreements (if it amounts to that) of defendants respecting their own acts in the matter of purchase of cattle, are only the exercise by them of their right to conduct their own business according to their own judgment, which was recognized in the above cases.

The following was laid down as to the construction of the Sherman Act, in the *Hopkins case* (171 U. S., 600), and was reasserted in the *Joint Traffic case* (171 U. S., 568):

"The Act of Congress must have a reasonable construction or else there would scarcely be an agreement or contract among business men that could not be said to have, indirectly or remotely,

> some bearing upon interstate commerce, and possibly to restrain it. We have no idea that the act covers or was intended to cover such kinds of agreements."

We ask no more than that this principle be kept in mind in considering the charges in this bill.

2. The charge in the eighth paragraph. (Trans., 7.)

The sole charge in the eighth paragraph is of a combination by defendants to raise, lower and fix prices, and to maintain uniform prices, at which they will sell their fresh meats. It is alleged that this is effected through the action of divers agents of defendants in secretly holding meetings and agreeing on the prices; and that the prices have been and are maintained by defendants by adhering to the same in their sales, by collusively restricting and curtailing the quantities of meat shipped by them in such trade and commerce to said markets, whenever necessary or conducive to the maintaining of prices so fixed, by imposing against each other penalties for deviations therefrom, by establishing a uniform rule for the giving of credits to dealers, and by notifying each other of delinquencies of dealers and keeping what is known as a "black list" of such delinquents, and refusing to sell meats to such delinquents.

(1) We have above argued that the business of defendants in the sale of fresh meats, as described in the second and third paragraphs of the bill, is not shown to be interstate or foreign commerce (*supra*, pp. 41-48). The sales there referred to are the sales made directly to dealers and consumers at the places where the meats are prepared, as alleged in the second paragraph of the

bill, which are fully made and completed and the deliveries thereon made, at the places where the meats are prepared. (*Supra*, pp. 41-43.) Or sales made by the respective agents of defendants having their meats at other places, to whom defendants have previously shipped such meats, as alleged in the third paragraph. As to all these sales the bill does not show that the sales are interstate commerce; but under its allegations they are to be regarded as domestic commerce of the states where made, as we have shown. (*Supra*, pp. 41-48.) The eighth paragraph itself fails to allege or show that the sales referred to are interstate commerce. There is, then, no contract or combination in restraint of interstate commerce alleged in the said eighth paragraph.

(2) But if the business of defendants described in said bill and referred to in said eighth paragraph is interstate commerce, no violation of said Sherman Act is therein charged.

The charge in the eighth paragraph of the bill is nakedly of an alleged combination of defendants to raise, lower and fix and to maintain *their own* prices for *their own* property in sales thereof *by themselves*. It will be observed that this is not in itself anything which the Sherman Act expressly prohibits or makes criminal. We submit that it is entirely lawful for dealers to fix and so raise or lower or maintain the prices of their own commodities, in their own sales thereof. It is not forbidden by the Sherman Act or by any other, but is a constitutional right.

Nor does the Sherman Act forbid or aim at a contract or combination to raise, lower or fix prices, or to maintain prices. Freedom of trade and not prices is the object of the act. It aims at that which is *directly, imme-*

diately and *necessarily* the restraining of trade to a *substantial* extent. "From time to time to raise, lower and fix prices, and to maintain uniform prices," is not directly and necessarily to restrain trade. It is rather an exercise of a freedom of trade than a restraint of trade. Every contract made by a seller and buyer fixing a price of a commodity in a sale thereof is an illustration. The combination alleged here is not in restraint of trade or a monopoly of trade, within the meaning of that act. That was laid down by this court in the *Hopkins* case, 171 U. S., 592; the *Anderson* case, 171 U. S., 615, in the Traffic cases, and in the *Addyston* case, 175 U. S., 228-9, 245.

That the allegation of a contract or combination among manufacturers or producers of an article which is intended to become the subject of interstate commerce, to raise, lower and fix prices of such article, does not charge a contract, combination or conspiracy in restraint of interstate trade or an attempt to monopolize that trade and is not sufficient under the Sherman Act, is clear from all the authorities. (*United States* v. *Nelson*, 52 Fed. R., 646; *in re Greene*, 52 Fed. R., 104; *United States* v. *E. C. Knight & Co.*, 156 U. S., 1, 16; *Gibbs* v. *McNeeley*, 102 Fed. R., 504, 507.) In the *Knight* case, 156 U. S., p. 16, this point was distinctly ruled as the point of decision. The court there held that while contracts, combinations or conspiracies to raise or lower prices "might unquestionably tend to restrain external as well as domestic trade," yet "the restraint would be an indirect result, however inevitable and whatever its extent, and such result would not necessarily determine the object of the contract, combination or conspiracy." And the court further held:

> "It was in the light of well settled principles that the Act of July 2, 1890, was framed. *Congress did not attempt thereby* to assert the power to deal with monopoly directly as such; or *to limit and restrict* the rights of corporations created by the states or *the citizens* of the states *in the acquisition, control or disposition of property; or to regulate or prescribe the price or prices at which such property or the products thereof should be sold.*"

It was there alleged and was an evident fact that the American Sugar Refining Company and Searles entered into the contracts in question in order to obtain complete control of the production and price of refined sugar in the United States and thereby did control the price of refined sugar and the production of about 90 per cent. thereof in the United States. Under the public policy which is a part of the common law system of jurisprudence of the American States, that form of combination has been held to be a most odious attempt to create a monopoly and restrain trade. (*Distilling Co.* v. *People*, 156 Ill., 468; *Glucose Co.* v. *Harding*, 182 Ill.) And the bill in the *Knight* case sought no more than the bill here. It sought to regulate the business of the defendants so far as it should be or become interstate commerce.

The bill here at bar does not allege that defendants control the business in fresh meats; nor does it allege or set forth any facts showing that defendants have combined to control said trade and commerce in fresh meats, or all of it in any of the markets or places referred to therein, or more than that which is now their own. It does not show that the alleged combination tends to any complete monopoly, which is necessary as held in the Knight case, *supra.*

The bill does not allege or show that defendants have

contracted or combined, in any manner, to restrict or interfere with the business of their competitors or others, or that they have done any act tending to that end; or that trade in fresh meats has been or is or will be in any way lessened by or under said alleged combination; or that by reason thereof the required supply of fresh meats in any of those markets has been or will be lessened.

The naked allegation of a combination of defendants to raise, lower and fix prices and to maintain prices in their own voluntary sales (which is all that paragraph eight of this bill contains) does not set forth a contract, combination or conspiracy in restraint of trade or commerce, or a monopolizing or an attempt to monopolize or a combining or conspiring to monopolize any part of such trade or commerce, as was held in the *Knight* case. Neither the act which the defendants are charged with combining to do is criminal or unlawful; nor are the *means* charged unlawful.

When the conspiracy charged is to do an act not in itself criminal, that charge must be accompanied with the further statement of means which defendants agreed together to use to effect the object; *and those means must appear to be criminal. Comm.* v. *Shedd,* 7 Cush., 514; *Comm.* v. *Hunt,* 4 Metc., 111, 129-30; *Pettibone* v. *United States,* 148 U. S., 203.

Here the acts charged as the means, if relied on to make the combination charged a conspiracy, must be violations of the Sherman Act, because that act alone is the source of the jurisdiction here. But they are not forbidden by that or any other law. A look at the means here charged will show that they are not unlawful. One of them is:

"By collusively restricting and curtailing the

quantities of such meats shipped by them in such trade and commerce to the markets aforesaid whenever necessary or conducive to the maintaining of the prices so fixed."

There is here no allegation of any mutual contract or combination so to restrict or curtail shipments. The most that is suggested is that it is done "*collusively.*" The defendants are entitled, upon a fair construction of this bill, to the most favorable interpretation of which the acts charged against them will admit. So far as price is concerned, the allegation is entirely consistent with no purpose of any defendant more illegal than to prevent his making sales at losing prices. No attempt on our part to justify this legal action of defendants is called for. And there is nothing illegal in any defendant's curtailing his shipments in order to maintain his prices.

But the restriction and curtailing the quantities of fresh meats to be shipped, by a mutual understanding among the shippers to that effect, would not be illegal, but entirely justifiable in the interest of the public as well as of their own legitimate business. The charge here amounts at most to this: The respective defendants (who are sellers in certain markets in competition with each other, of fresh meats prepared by them at points remote from said places of sale) respectively keep themselves informed of the circumstances respecting the supply and demand at those markets, as a prudent dealer in an article so perishable should do; and in so doing they respectively learn from each other the amount of fresh meat which other of defendants may have in that market for sale; and they having (as is alleged) combined "to raise, lower and fix prices, and to maintain uniform prices at which they will sell," each accordingly regulates

the amount of fresh meat *he will himself* have there for sale at that time, so as to prevent an overstocked market. Maintaining of prices in that manner is synonymous merely with preventing a glut of perishable meats in the market. To illustrate: Two or three or more of the defendants are selling fresh meat competitively to dealers and to consumers in some city, say Syracuse, New York, which of course requires only a limited amount of fresh meat each day. This meat is produced in Chicago, Kansas City or other remote western slaughtering points and sent by the producers in cars over the railroads to their respective agents at Syracuse, and is there placed in their own warehouses and offered for sale. If each acts without any knowledge of what the other is doing in that market, there will be an over-supply of fresh meat in their warehouses there. The meat has to be sold at that point. It could not be moved to another market without great loss; and it must be sold there quickly, or it will spoil and serious loss result. Even a cutting of the price would not dispose of such surplus before it would be injured and spoiled, because the demand there is substantially a fixed one, and increase in consumption and demand there in fresh meats is not quick enough to absorb the excess, and honest or prudent dealers would not at any price purchase—and unscrupulous or imprudent dealers should not be permitted to purchase—more meat than they could dispose of to their customers while it is still fresh and wholesome. If by reason of reduced price such oversupply should be disposed of by the defendants, either the dealers and public would be likely to suffer the loss of the meats when spoiled and thrown away, or the consumers would have palmed off on them tainted and unwholesome meats. In either case defendants would suf-

fer loss in their business, not merely in the cutting of prices below cost, but in the frequent claim (however, unjust) that the quality of their meats was bad when sold by them.

Human experience teaches no fact more indubitably than that a glutted market of a perishable article of human food is a menace to the public health and welfare; and that the unrestrained competitive struggle to get rid of such glut inevitably tends to fraud and cheating of the unwary consumer and his consumption of tainted and unwholesome food. It is equally certain that this would be caused and accomplished by the temptation to dealers and consumers of cut prices. There is no lessening of trade whatever by the action of defendants in maintaining uniformity of prices as between themselves for their own perishable commodity, unless it be the prevention of a glutting of the markets with perishable fresh meat and the evils thereof above mentioned, and of the dishonest trade which would be induced.

These considerations are sustained by facts which are a matter of common knowledge of which the court takes judicial cognizance. And the scant allegations of the bill are to be read, as if all the surrounding facts and circumstances, under which the alleged acts and agreements of defendants took place, and which are of common knowledge, were themselves also alleged.

So the curtailing of shipments, to prevent an overstocked market and the consequent cutting of prices to get rid of it, is for the public good. At any rate, it is not in illegal restraint of trade. It is as proper, and on like grounds, as the rules of the Traders Exchange were held to be in the *Anderson case*.

This was recognized by the learned circuit judge in the final decree, but not by counsel in their bill; and the decree accordingly limits the injunction in that respect by providing that nothing therein shall be construed to prohibit defendants "from curtailing the quantity of meat shipped to a given market, when the purpose of such arrangement in good faith is to prevent the over-accumulation of meats as perishable articles in such markets." (Trans., 34.)

That the motive of the merchant may be to promote his own business interests and prevent a demoralization of prices and save himself from loss or secure himself a reasonable profit, would not affect the rule. That is the proper purpose of conducting any business.

The act is not brought within the condemnation of the law merely because of the intent. "An act which does not amount to a legal injury cannot be made actionable because it is done with a bad intent." *Stevenson* v. *Newnham*, 13 C. B., 285, per Parke, B.; *Allen* v. *Flood* (1898), App. Cases, 1.

Another of the "means" mentioned in the eighth paragraph of the bill is "by establishing a uniform rule for the giving of credits to dealers." Another is "by notifying each other of the delinquencies of the said dealers, and refusing to sell meats to any of such delinquents."

While in studying even these specifications one cannot get away from the impression that the learned counsel for the Government, in drafting this bill, have covered up the meagerness and poverty of their case by indefiniteness and generality, yet it is obvious that when counsel descends to any specific facts, those facts defeat their epithets and general charge, and show that what defendants

have in fact done are proper acts in the conduct of their own business, and are not violations of the act of Congress. Whenever they assume to specify any acts, the acts specified are legal and innocent, and not illegal or noxious. If these specifications have any meaning, it is that the defendants, competitors in business in the sale of fresh meats in a market or markets, have established a uniform rule as to giving credit to dealers purchasing from them, under which rule they refuse to sell meat upon credit to any "delinquent," that is, to a dealer who does not pay his bills. A delinquent is one who has failed to perform a duty or discharge an obligation. The only duty or obligation here referred to is the payment of just debts for which credit was extended. That this action of defendants in stopping credit to these delinquents is not in restraint of trade, within the meaning of the act of congress, would seem to be clear upon this mere statement without any citation of authorties. The ruling of the Supreme Court in the *Anderson case* sustaining the rules of the Traders' Live Stock Exchange of Kansas City, which tended to maintain commercial honesty, is squarely in point.

And it is equally plain that such action would not have the effect or be a means of raising or maintaining prices of meat. The natural and reasonable effect of such action would be to lower the price of meat. For a merchant to so restrict the credits given to customers as to lose no money in bad debts, is to enable him to lower prices; while if careless in the matter of credits, his losses from bad debts will be made good by a higher price to customers who pay.

Here, again, the circuit judge recognized the strength of this position by qualifying the decree of injunction that

nothing therein should be construed to prohibit defendants "from establishing and maintaining rules for the giving of credit to dealers, where such rules in good faith are calculated solely to protect defendants against dishonest or irresponsible dealers." (Trans., 34.)

These qualifications were plainly called for if any such injunction at all regulating defendants' business in these respects were to be entered. But the whole bill and decree show that the wholesale regulation by a Federal court of the conduct of private business upon the general allegations of such a bill as this, was never contemplated by the makers of the Constitution or authorized by the Sherman Act; and this is emphasized by these necessary qualifications of the decree. Instead of qualifying the injunction, the court should have refused the injunction and dismissed the bill, and declined the function of thus regulating trade and commerce and the future conduct of defendants' business.

3. The charge in the ninth paragraph. (Trans., 7-8.)

This is that defendants have combined to require their respective agents at many of the markets for fresh meats to make and impose uniform charges for cartage for the delivery of meats, upon sales by them to dealers and consumers in those markets. All that has been said respecting the other paragraphs applies with peculiar force to the ninth paragraph. The transactions here referred to, as they are alleged, are not shown to be interstate or foreign commerce. And the alleged action of the defendants in the premises is not in restraint of trade.

This point is determined in our favor by *Penna. R.*

R. Co. v. *Knight,* 192 U. S., 21, where the cab service performed could be contended to be a part of the interstate transportation with much more force than the contention can be here made that the cartage service here in question (which is rendered within the state, after a domestic sale has been made and as a part thereof), is interstate commerce.

In *Detroit, etc., Railway* v. *Interstate Commerce Commission,* 74 Fed. R., 803, 808-9, 811, it was held that even in the case of common carriers the cartage service in the delivery of goods transported over a railroad is a distinct, disconnected and separate service from the railroad transportation. Being a local service, which follows and is not connected with the transportation, it is a domestic and not interstate transaction.

And the carting is, at most, a "facility" of the commerce; and the charge for that service is not any part of interstate commerce, and an agreement respecting the same is not any regulation or restraint of that commerce, within the Sherman Act, as is held in the *Hopkins case,* 171 U. S., 578, 592-7.

But in the case at bar there is not the shadow of a ground, which existed in the cases cited, for connecting this matter of the cartage of fresh meats from the warehouses of defendants to the shops or houses or dealers or consumers, with any interstate commerce. As we have shown, it is to be here taken that the meats are sold in the warehouses of the defendants in broken packages. It is clear that the business is not shown by the bill to be interstate commerce. Clearly, defendants, who are engaged in private business, have the right to sell their meats for delivery only at their warehouses, and not at the shops or houses of their customers; and having that right, they

have a right by mutual agreement to make that the uniform rule in the conduct of their business. And so they have the right if the purchaser desires them to deliver the goods, to charge cartage for such delivery; and they have a right by mutual agreement to make that charge uniform.

It is obvious that nothing here charged has the direct, immediate or necessary effect to restrain interstate trade or commerce.

This paragraph of the bill shows (if it should be conceived to charge a violation of the Sherman act) to what extremes a paternal government might go in interfering and controlling the private affairs of its citizens. No government has ever before gone so far.

The Circuit Court recognized the force of our contention to the extent of qualifying the injunctional decree, so that nothing therein should be construed to prohibit defendants from agreeing upon charges for cartage and delivery and other incidents connected with local sales, "where such charges are not calculated to have any effect upon competition in the sale and delivery of meats." (Trans., 34.)

We maintain that the injunction should have been refused and the bill dismissed.

4. As to the charge in the tenth paragraph.

The tenth clause of the bill alleges that defendants have "all and each" engaged in and will continue arrangements and agreements with divers officers and agents of common carriers, whereby defendants were to receive and have received and will receive, "by means of rebates and other devices, unlawful rates" for the trans-

portation of live stock and meats, "much less than the lawful rates," and were to enjoy and have enjoyed and will enjoy said advantage to the exclusion of competitors and the general public. And it is charged that by force of the consequent inability of competitors to engage or continue in such commerce without loss, defendants have monopolized and will continue to monopolize and have attempted and will continue to attempt to monopolize such commerce in live stock and fresh meats.

We take it that this paragraph or count is intended to charge a violation of the second section of the Sherman Act. We beg to submit with respect to this charge:

(1) The bill does not present any facts as to the terms of the alleged agreements of defendants with carriers, or as to the rates received by defendants and others or as to the lawful rates established and published, from which it will appear that the conclusion of law—that the agreements are for "unlawful rates" or rates "much less than the lawful rates"—may be drawn. It merely asserts the conclusion. It is bad on that ground.

It names none of the carriers or the agents of carriers with whom such "arrangements and agreements" have been made, and gives no dates or facts with respect thereto. It alleges no facts to show that any competitor or would-be competitor has been refused like rates. It does not allege ignorance of these necessary facts as an excuse for not stating them, or even rest upon an allegation upon information and belief as to the general charge,—from which it must be assumed that the Government had knowledge of all the actual facts there were. It follows that this charge (as all the others), is too indefinite and general to call for answer.

(2) The acts of defendants alleged in this paragraph are not a monopolizing or an attempt to monopolize any part of the trade or commerce among the states, within the Sherman Act. It is nothing more as alleged than an attempt to purchase transportation at the lowest rates. An attempt by a merchant to purchase his goods from a seller in competition with other sellers and buyers, at the lowest possible price would be no less an attempt to monopolize than this. In either case, the effect, if any, is only an indirect and incidental one.

(3) There is nothing in the Sherman Act (under which alone this petition was filed), which forbids any defendant from accepting or obtaining such rates for the transportation of their own property as he might. That subject, so far as congress has seen fit to legislate thereon, is covered by the interstate commerce acts. This proceeding is not brought under that act.

But this bill does not allege any violation of the Interstate Commerce Act. That act only forbids discrimination in charges for services like and contemporaneous for like traffic and for transportation under substantially like circumstances and conditions. To determine whether there has been a violation thereof in a given case, all the circumstances and conditions that reasonably apply to the situation and affect the question must be considered. The power is given by the act in the first instance, to the Interstate Commerce Commission to hear and determine that question; and this is to be upon notice to the carriers, and a right to a hearing on their behalf; and the orders of the commission are to be enforced by the courts upon its application; and its conclusion is made *prima facie* evidence. The Act of February 19, 1903 (which was not passed until after this proceeding was com-

menced), does not authorize this proceeding. (Compiled Stat. Suppl., 1903, pp. 363-66.) The proceeding there authorized is against the carriers; and requires the facts to be alleged. Obviously, no case is here presented which conferred any jurisdiction on the Circuit Court to enquire into or redress any alleged violation of the interstate commerce acts, if this proceeding were referred to those acts.

Again, at the time of the alleged violations here, and when this proceeding was instituted, neither the Interstate Commerce Act, nor any other federal law, forbade a defendant to contract for such rates of transportation of his property as he could get. The later Act of February 19, 1903 (Comp. Stat. Supp., 1903, 363-64), was the first act aimed at shippers.

It is suggested that according to the contentions of counsel for the Government, the interstate commerce acts and the Sherman Act proceed from different and opposing economic theories. The policy of the Interstate Commerce Act is uniformity of transportation rates and not competition in such rates. On the other hand, according to counsel, the public policy declared by the Sherman Act is unrestricted competition. Unrestrained competition is the *bete noire* of one act and the fetish of the other.

Obviously, then, this paragraph ten cannot be sustained under the Sherman Act, on which it is based. The alleged rates which defendants are there charged with having secured, are the result of competition. The alleged "inability of competitors and would-be competitors to engage or continue in such commerce without ruinous loss," is the result of that competition, which, according to counsel's contention, the Sherman Act requires to be free from any restraint.

(4) The tenth paragraph strikingly illustrates the grounds of multifariousness and misjoinder presented by the demurrer, as will be shown later.

(5) The bill and decree as to this matter are subject to all the objections which have before been urged, that they do not determine a case; but impose upon the court the regulation of commerce and the control of the future conduct of defendants' business, without limit of time. And the injunction is without precedent or support in authority (*supra,* pp. 35-40).

5. The eleventh paragraph or count of the bill (Trans., 8-9.)

This paragraph in most general terms charges:

> "That the said defendants now are and for years past have been in combination and conspiracy with each other and with the railroad companies and others to complainant unknown, to obtain a monopoly of the supply and distribution of fresh meats throughout the United States and its territories, and shipments thereof to foreign countries. To that end, the defendants do and will artificially restrain such commerce and put in force abnormal, unreasonable and arbitrary regulations for the conduct of their own and each other's business. Affecting the same from the shipment of the live stock from the plains to the final distribution of the meats to the consumer, all to the manifest injury of the people of the United States and in defiance of law."

This paragraph is so plainly insufficient that it calls for no argument. It alleges only a legal conclusion, and contains nothing to put defendants to their answer. What has been said on this point, and on other points, with reference to other paragraphs applies here.

IV.

THE DECISIONS UNDER THE SHERMAN ACT OF 1890.

A consideration of the decisions under the Sherman Act will make clear the insufficiency of this bill. That act is so broad and general in its terms that there has been wide divergence of judicial opinion as to its construction and scope. Yet counsel for the Government here present allegations and charges as general and indefinite as the language of the act itself, and if the court can condemn citizens and regulate and interfere with their private business on such vague and general charges as these, then trade and commerce will be greatly restrained and prevented by an act which was intended to promote its freedom.

(1) Among the first cases which were brought by the Government under the Sherman Act in question, and in which decisions were reported, was a criminal prosecution of persons who were engaged in forming the combination known as the Distilling and Cattle Feeding Company. Indictments were found in the District Court for the District of Massachusetts, and the sufficiency of them arose before Judge Nelson in that court on a motion to quash, in *United States* v. *Greenhut* (50 Fed. Rep., 469); before Judge Ricks, in the Northern District of Ohio, on an application for a warrant to remove certain of the defendants in the same case, Corning and others (51 Fed. Rep., 205); before Judge Jackson (then Circuit Judge, but later Circuit Justice), on the application of Green and others, defendants in the same case, for a writ of habeas corpus (52 Fed., 104); and before Judge Lacombe in the Southern District of New York,

on the application of Terrell, another defendant, for a writ of habeas corpus (51 Fed. Rep., 213).

About the same time, in the case of *United States* v. *Nelson and others,* a combination of lumber dealers was brought under the same act before Judge Nelson, in the District Court of Minnesota, on demurrer to the counts of the indictment (52 Fed. Rep., 646).

The next case under the same act seems to have been the *Trans-Missouri case,* in the Circuit Court for the District of Kansas, which was by bill in equity on the part of the Government (53 Fed. Rep., 440). Then followed the *Deuber Watch Case Co. case,* a suit for damages, before Judge Coxe, in the Circuit Court for the Southern District of New York (55 Fed., 851), which was affirmed by the Circuit Court of Appeals (66 Fed., 637).

In each of the above cases there was a concurrence in judgment upon certain questions, which has not been disturbed or affected, but, so far as considered by this court, has, as we think, been approved by the decisions here. Among those points are these:

(1) That to make a case under the Sherman Act, the sufficiency of the pleading making the charge must be tested, not by the general recitals and averments thereof, but by the specific acts or particular facts which are alleged to have been done and committed by the defendants. (52 Fed., 111-12, per Jackson, Circuit Judge; 52 Fed. Rep., 646, per Nelson, J.; 51 Fed. Rep., 210, per Ricks, J. See also *Addyston case,* 175 U. S., 245.)

(2) That contracts by manufacturers and sellers like defendants here, by which prices of their products are fixed or maintained or made uniform, or their own private business regulated, are not, in themselves, contracts in restraint of trade or attempts to monopolize trade or commerce.

For instance, in the cases cited, certain persons, for the purpose of restraining trade and commerce in distillery products, as was alleged, combined together, and in the form of a corporation obtained control of seventy distilleries within the United States, by means of which they controlled the manufacture and sale of seventy-five per cent. of all the distillery products made and sold within the United States; and were thereby able to control and fix the prices at which they would sell such products to dealers, and at which such dealers should sell the same, and by said means intended to control the amount of distillery products manufactured and sold among the several states, and to control and fix the price at which the same should be sold, and to prevent the effect of free competition in price and to increase the price, and thereby exact great sums of money from citizens purchasing such products and to secure to themselves exclusively the trade and commerce in such products, and to restrain trade and commerce therein among the several states. And in pursuance of said purpose said persons, under the form of said company, did sell distillery products, and by reason of said combination and of their said control, *did fix the price* at which the purchasers should and did sell said spirits in inter-state commerce, and by this means controlled the amount of such products sold, and did fix the price at which they were sold and thereby prevented the effect of free competition on the usual price, and did increase the usual price. And also said persons agreed with other purchasers, dealers in such products, that such dealers should buy such products exclusively from such persons, and should sell the same at prices not less than those fixed by the agents of said sellers, and in consideration thereof said sellers agreed to pay to said dealers a rebate on

articles so by them purchased. All of this was fully set forth; yet this did not show a violation of the Sherman act.

The averments in that case, it will be observed, were of many more and more specific acts and facts to show a violation of the act in question, than is to be found in the bill here; and the effect of defendants' agreements in restraint of interstate trade and commerce, and their power and purpose thereby to control and restrain and monopolize the entire interstate trade and commerce in the article there in question, were a great deal more directly and fully averred there than is done in the bill of complaint here—where, in fact, the allegations are merely conclusions of law and fact, or mere "epithets."

Yet, it was held by Mr. Justice Jackson, *in re Greene*, above cited, that, "stripping the indictment of its verbiage,—its general recitals and conclusions of law,"—it charged no violation of the act in question; and that the acts and agreements averred did not amount to, or show, a contract or combination in restraint of trade, or an attempt to monopolize trade within said act. And this was, in effect, the ruling by Judges Nelson, Ricks and Lacombe, in the other cases, above cited, where the sufficiency of the same indictment came before them.

And the same was held by Judge Nelson, in *United States* v. *Nelson*, 52 Fed. Rep., 646, in the case of the agreement of the lumber dealers.

Under the decisions, above mentioned, it is clear that the demurrers to the bill here must be sustained. Upon all the questions which are here presented the rulings in those cases, disclose a striking unanimity. The strength of that concurrence of judgment upon those questions, has not been in any way impeached, but so far as the

same questions have been fairly presented in the cases there reviewed, has been sustained by the decisions of this court.

(2) The case at bar will be seen to fall outside the test laid down by this court, that the restraint upon interstate commerce must be direct and immediate in order to come within the act.

The cases in the Supreme Court, in which the Sherman Act has been held to apply and the contracts or combinations complained of held to be in violation thereof, are *United States* v. *Trans-Missouri Assn.*, 166 U. S., 290; *United States* v. *Joint Traffic Assn.*, 171 *id.*, 505; *Addyston Pipe Co.* v. *United States*, 175 *id.*, 211; *Montague* v. *Lowry*, 193 *id.*, 38, and *Northern Sec. Co.* v. *United States*, *id.*, 197. Those cases are each so distinct in material facts from the case at bar that the decision thereof cannot apply to govern this case. In each of those cases all the material facts and circumstances were presented to the court by pleading and proof, including the terms and provisions of express and specific contracts and acts of defendants in carrying out the same, by which it clearly appeared that interstate trade and commerce was to be and was directly and unreasonably restrained.

In each of the cases, the jurisdiction and judgment of the court was invoked to adjudge a particular contract or contracts to be illegal and to enjoin their performance. But in none of them did the Government, upon the general charge that the defendants had combined and were combining and would combine to restrain interstate commerce, ask the court to enjoin them generally from doing so in violation of the Sherman act, and thus assume the supervision of all their future business.

In each of those cases, as indicated by Mr. Justice Brewer in the *Northern Securities case* (193 U. S., 361), the contracts presented were unreasonable restraints of trade within the common law definition or rule.

The cases in which the Sherman Act was held by this court not to apply to sustain the case of the Government are *United States* v. *E. C. Knight & Co.*, 156 U. S., 1; *Hopkins* v. *Same*, 171 *id.*, 578, and *Anderson* v. *Same*, *id.*, 604.

We beg to be permitted to consider these cases here briefly. In the *Knight case* (156 U. S., 16), it was held that a combination to control the manufacture and production and the price of refined sugar—an article of necessity—was not a combination to restrain interstate trade or commerce within the provisions of this act of Congress. It was said in the opinion of the court that the restraint of interstate trade which contracts or combinations to raise or lower prices would tend to effect would be an indirect result. Also, that congress did not attempt by the Sherman Act to limit the rights of corporations created by the States or citizens of the States, to regulate or prescribe the prices at which their property or products should be sold. This ruling was necessary to the decision, because it was there alleged and was an evident fact that the American Refining Company made the contracts of purchase of the four defendants in question in order to obtain complete control of the production and price of refined sugar in the United States, and did control such price. It appeared that the American Sugar Refining Company there controlled refineries in which about 90 per cent. of the sugar refined and sold in the United States was produced.

The form of combination there (the organization of a single corporation or owner for the purpose of controlling the production and trade and price of an article of commerce) tended directly to an effective and complete monopoly, and was one which was clearly offensive to the principles of public policy against monopolies, which are a part of the system of jurisprudence of the American States. (*Richardson & Buhl,* 77 Mich., 632; *Distilling Co.* v. *People,* 156 Ill., 448, 486; *Harding* v. *American Glucose Co.,* 182 Ill., 551, 615.) On the other hand, the alleged agreements of defendants here are not subject to any such condemnation. (*Bohn Mfg. Co.* v. *Hollis,* 54 Minn., 223; *Central Shade Roller Co.* v. *Cushman,* 143 Mass., 353; *Comm.* v. *Hunt,* 4 Metc., 111; *Matthews* v. *Associated Press,* 136 N. Y., 333; *Continental Ins. Co.* v. *Board of Underwriters,* 67 Fed., 310, per McKenna, C. J., and cases cited.) The effect of the combination in the *Knight case,* upon interstate trade, was more direct, at least no more indirect, than the alleged combinations of defendants here charged. It was more direct than the case at bar, because, as last stated, it tended directly to a monopoly in single hands of the production, price and trade of an article of general use throughout the United States, which was produced in greater part for the purpose of interstate trade than for domestic trade.

In other respects the combination in the *Knight case* was no more indirect than that charged in the case at bar. In this case, as in that, the alleged combination affected the production and price of a product which was not yet and might or might not become, according to the future action of the owner, the subject of interstate commerce.

In *Hopkins* v. *United States,* 171 U. S., 578, the defendants, whose contract of association was the basis of the suit under the Sherman Act, were engaged as commission merchants at the Kansas City stock yards, in the business of buying and selling live stock, which was consigned to them for the purpose of sale, and the rendering of an account of the proceeds and remitting the proceeds arising therefrom. It was there shown that the larger proportion of the purchases and sales was of live stock sent into that State from other States or from the Territories. It appeared that by their mutual agreements defendants fixed and maintained the rates of commission to be charged for handling and selling such cattle; and in order to secure the business sent their agents into other States to the owners of cattle, to solicit the business from them, and also loaned money to the cattle owners and took back mortgages upon the cattle as security for the loans and made advances of a portion of the purchase price of the cattle to be sold, by means of the payment of drafts drawn upon them by the shippers of the cattle in the other States at the time of the shipment. The court said:

> "The contract condemned by the statute is one whose direct and immediate effect is a restraint upon that kind of trade or commerce which is interstate.
> * * *
>
> "To treat as condemned by the act all agreements under which, as a result, the cost of conducting an interstate commerce business may be increased, would enlarge the application of the act far beyond the fair meaning of the language used. There must be some direct and immediate effect upon interstate commerce in order to come within the act."

It appeared that one of the articles of the agreement of the association of the defendants prohibited the em-

ployment of any such solicitor except upon a stipulated salary not contingent upon the commissions earned, and provided that not more than three solicitors should be employed at one time by the commission firm or corporation, resident or non-resident, of Kansas City. With respect to the validity of such an agreement, the court says:

> "It is also to be remarked that the effect of the agreement as to the number of solicitors to be employed by defendants can only be remote and indirect upon interstate commerce. * * * We say nothing against the constitutional rights of each one of the defendants and each person doing business at the Kansas City stock yards to send into distant States and Territories as many solicitors as the business of each will warrant. This original right is not denied or questioned. *But cannot the citizen, for what he thinks good reason, contract to curtail that right? To say that a State would not have the right to prohibit a defendant from employing as many solicitors as he might choose, proves nothing in regard to the right of individuals to agree upon that subject in a way which they may think the most conducive to their own interests. What a State may do is one thing, and what the parties may contract voluntarily to do among themselves is quite another thing.*
>
> "The liberty of contract as referred to in *Allgeyer* v. *Louisiana*, 165 U. S., 578, is the liberty of the individual to be free, under certain circumstances, from the restraint of legislative control with regard to all his contracts, but the case has no reference to the right of individuals to sometimes enter into those voluntary contracts, by which their rights and duties may properly be measured and defined and in many cases greatly restrained and limited."

By "the liberty of the individual to be free from legislative control with regard to all his contracts," the court refers to the right protected by the Fifth Amendment. Under that guarantee he cannot be any more denied the

right to contract for the limitation of his acts, than to make any other contract.

That a valid contract in the interest of their own private business may be made, by private dealers engaged in interstate commerce, with each other, by which their purchases and sales of articles of interstate commerce are restrained and lessened, and that such contracts are not forbidden by the Sherman Act in question, is more clearly shown by the decision of this court in *Anderson* v. *United States, supra,* which is most in point here of any case which has been decided under the act in question.

In that case the court for the purposes of the decision of the other question assumed, without deciding, that the defendants were engaged in interstate commerce and that their agreement in question was with respect to interstate commerce. (171 U. S., 615.)

The agreement of the defendants there in question (who were what was called "yard traders" or "speculators" at the Kansas City stock yards) was contained in the articles of association of "The Traders' Live Stock Exchange" and the by-laws thereof, which were their mutual agreements with each other. One of the by-laws was that said exchange would not "recognize" any "yard trader" unless he was a member of said exchange. This was shown to be and was treated as a mutual agreement *not to deal with certain persons, or with persons who also dealt with certain of their competitors.* And it was alleged and shown that the purpose of these rules was (and they were so carried out by the the defendants) that the members of the association would not purchase any cattle from any commission merchant who should sell cattle to or purchase cattle from any "yard trader" who was not "recognized," *i. e.,* was not a member of said

exchange, and by notifying commission merchants of such refusal, thus compel them not to sell any cattle to any such yard trader who was not a member of said exchange, by boycotting any commission firm who should make sales of cattle to yard traders who were not members of said exchange. As expressed by the court, with yard traders who are not members of the exchange, "the defendants will not compete, nor will they buy of the commission men if the latter continue to sell cattle to such traders." (P. 614.)

The court held this contract or combination to be valid and not to be in restraint of trade, and said of it:

> "*The agreement* as evidenced by the by-laws *is not one in restraint of that trade, nor is there any combination to monopolize or attempt to monopolize such trade within the meaning of the act.*"

The grounds of this decision were that the court found that these rules and agreement were such as private persons, in the exercise of their right of private contract with respect to their own business dealings, might lawfully make with each other, although they were competitors in business with each other and with the other yard traders so excluded from their dealings.

The court further holds (p. 616) that as the acknowledged powers of a State may be exerted and applied in such a manner as to affect foreign or interstate commerce without being intended to operate as commercial regulations (as held in *Smith* v. *Alabama*, 124 U. S., 465, 472)—so, notwithstanding the Sherman Act, valid agreements may be entered into between persons engaged in the same business for the purpose of properly and reasonably *regulating the conduct of their business among themselves and with the public*, although such agree-

ments may affect (and restrain, as was done there) foreign or interstate commerce. And the court then says:

> "If an agreement of that nature, while apt and proper for the purpose thus intended, should possibly, though only indirectly and unintentionally, affect interstate trade or commerce, in that event we think the agreement could be good."

The *Trans-Missouri case* (116 U. S., 290) and the *Joint Traffic case* (171 *id.*, 505) were decided by a divided court. This court, by a bare majority, reversed the decisions of the Circuit Court of Appeals and of the Circuit Court. So that it may be said that judicial opinion in those cases was fairly balanced; and it is a just conclusion that those cases were close to the line which separates cases which are within from those which are without the application of the Sherman Act.

There was before the court the distinct provisions of explicit agreements, each of which concerned all the competitive traffic in certain territory. Their purpose was plain—to control and regulate and monopolize such traffic, and prescribe and maintain rates for freight transportation on competitive traffic in that entire territory. For instance, in the *Joint Traffic case,* the court said:

> "By this agreement, the board of managers is in substance and as a result thereof placed in control of the business and rates of transportation, and its duty is to see to it that each company charges the rates agreed upon and receives its equitable proportion of the traffic." (P. 565.)

And it was found by the court that the natural, direct and necessary effect of the various provisions of the agreement there in question was to prevent any competition whatever between the parties to it, in the public business of the railroads, for the whole time of its exist-

ence, and was probably as effective in that way as would be a provision in the agreement prohibiting, in terms, any competition whatever. (*Id.*, 565.)

It was urged upon the court in the *Joint Traffic case*, that if the Act of July 2, 1890, is construed to make criminal all contracts in restraint of trade in any degree, although such contracts were not necessarily prejudicial to the welfare or security of society (as it was conceived the language of the opinion in the *Trans-Missouri case* held), then such act infringed the guaranties of the fifth amendment to the Constitution, and instances of various kinds of contract which are rendered illegal by such construction, but which are protected by the Constitution, were given by counsel. The court did not deny that the act, if so construed, would be unconstitutional, but in effect held that the act was not to be construed to forbid such contracts. And the court observed that no contract of the nature there instanced was then before the court, and that none such was forbidden by the act.

In each of the traffic cases, the agreements were between corporations engaged in the public business of common carriers, and they were held to be in illegal restraint of trade and against public policy *at the common law* (166 U. S., 333, *et seq.*), following *Gibbs* v. *Baltimore Gas Co.*, 130 U. S., 396, 408; *Chicago Gas Co.* v. *Peoples Gas Co.*, 121 Ill. 530, and other cases. The decision of the above cases was then reached without holding that *every* or *any* contract between private sellers of an article by which the price thereof is to fixed or maintained in interstate trade, is in restraint of such trade within the meaning of said act; or even that every contract of such private dealers which restrains trade is within the prohibition of said act. The contrary was held in the *Hopkins* and *Anderson cases*.

It is plain that the rule of decision, therefore, which was applied by the Supreme Court to these contracts of public common carriers, does not apply to the business and facts alleged in the bill in the case at bar.

In the *Addyston case* (175 U. S., 211), tne full terms of the agreement of combination between the defendants was before the court. Those companies were located in different States and were engaged in the manufacture, sale and transportation of iron pipe. The record shows that the contracts for furnishing pipe were let upon competitive bidding, for the most part by municipalities, and that the agreement in question was an *agreement among bidders*, which plainly destroyed all competition between the defendant companies by dividing up the business of the cities and in the territory covered by them. It was made for that purpose and undertook to divide up the business and give to one company the business of certain cities and to another the business of other cities, and so restrained the trade in each city of all the parties, except the one company to whom the city was allotted. This agreement among companies who were seeking contracts by bidding therefor at public lettings to the lowest bidder was, therefore, plainly prejudicial to the public interests and against public policy, upon common law principles, according to the authorities. (*Hyer* v. *Richmond Traction Co.* (Cir. Ct. App., 4th Cir.), 80 Fed. R. 839; *Gibbs* v. *Smith*, 115 Mass., 592; *Hunter* v. *Pfeiffer*, 108 Ind., 197; *Jones* v. *Caswell*, 3 Johns. Cas., 29; *King* v. *Winans*, 71 N. C., 469.)

It was also found and held in the *Addyston case* that the agreement or combination was not one which simply secured for its members fair and reasonable prices for the article dealt in by them, but that the facts showed conclu-

sively that the effect of the combination was to enhance prices beyond a sum which was reasonable. (*Id.*, 235-8)

The *Addyston case* is in vital respects unlike the case at bar and its decision is not applicable to this case.

The *Montague case* (193 U. S., 38) is equally distinguishable. The tile association agreement in question there (section 7), expressly provided that no dealer and active member thereof should purchase from any manufacturer of tiles not a member of the association, nor sell for prices less than list prices adopted by the association to any person not a member , and no person in the business in San Francisco within a radius of 200 miles was qualified for membership who carried less than $3,000 worth of stock. By reason thereof, the plaintiffs, who had established a profitable business in San Francisco, but who did not carry $3,000 worth of stock and could not become members of the association, were unable to procure tiles from the manufacturers (who refused to sell to them at any price because they were not members), or from dealers in San Francisco, except at a price fixed by the association, fifty per cent. over the price at which members could purchase. Here was a direct restraint of trade and attempt to create a monopoly by a direct and wrongful interference by this association with the business of other dealers. Nothing of that kind is alleged in the case at bar.

It is permissible here to invoke the rule that the language in the opinions in some of the cases in which the Sherman Act was held applicable, is to be taken only with their own facts; and the case there presented for decision upon those facts was not at all the case at bar here.

In *Quinn* v. *Leathem*, in the House of Lords, 85 Law Times Reports, 289, and Appeal Cases, 495, Lord Chancellor HALSBURY said:

> "There are two observations of a general character which I wish to make; and one is to repeat what I have very often said before—that every judgment must be read as applicable to the particular facts proved or assumed to be proved. * * * The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it."

In *Cohens* v. *Virginia* (6 Wheat., 399), the court was much pressed with some portion of its opinion in *Marbury* v. *Madison*, and Mr. Chief Justice MARSHALL said:

> "It is a maxim not to be disregarded, that general expressions in every opinion are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented."

And in *Carroll* v. *Carroll's Lessee*, 16 How., 287, Mr. Justice Curtis quoted this and stated the rule to be that "any opinion given here or elsewhere cannot be relied on as a binding authority, unless the case called for its expression."

Observing that rule, it will be found that the decisions of this court involving the Sherman Act, which are here in point, are those in which it has been held that that act was not violated.

It will be observed that in no previous case has the Government successfully invoked the extraordinary jurisdiction of the court to interfere with and enjoin the conduct by defendants of their private business upon such general charges and epithets as are presented in this bill.

The character of defendant's acts and contracts alleged in the bill of complaint is not affected by the general charges of illegal purpose or epithets contained in the bill. Counsel cannot make these acts and contracts illegal by charging them to be illegal. The question is, as said by Mr. Justice Day in the *Chesapeake & Ohio case* (115 Fed. R., 610), after considering the decision of this court,—is the ***necessary effect*** of these alleged acts and contracts ***directly and immediately to restrain*** trade or commerce among the states, or to monopolize such trade or commerce. And this necessary effect must be shown by the facts alleged—the contracts or acts themselves of the defendants, which are set forth in the bill of complaint, and not by the pleader's characterization of them.

Again, we repeat that never before has a court been asked, upon a bill containing such general charges of violation and of intention in the future to violate the Sherman act, to enjoin defendants from violating the law and assume the supervision of the future conduct of their private business. If that is authorized by the Act of July 2, 1890, it is suggested that it is an act designed to restrain and hamper, and not to promote, the freedom of trade.

Now, all the alleged acts and agreements of the defendants, which are (so meagerly) charged in the bill of complaint are, so far as they are shown by facts alleged in said bill are concerned, entirely consistent with the utmost freedom of trade. There is not a single fact alleged which tends to show any sort of interference by defendants with the business or freedom of trade or conduct of any other person,—not so much as there was in the *Anderson case*. There is nothing in the bill here tending to show any contract or combination to restrict the trade of the defendants themselves. That was not so in the ***Anderson case.***

V.

THE ACT OF JULY 2, 1890, MUST BE CONSTRUED IN THE LIGHT OF THE SETTLED PRINCIPLES OF THE COMMON LAW RESPECTING PERSONAL RIGHTS OF PROPERTY AND OF CONTRACT.

It has been supposed that we are not to look to the common law for light or aid in the construction of the Sherman Act; and perhaps color for this position is to be found in the language of some of the majority opinions of this court in cases which have arisen under that act. We maintain that this language was unnecessary to the decision as pointed by Mr. Justice Brewer in the *Northern Securities case*, and is against settled principles of construction of federal statutes. As we have shown, in each of the cases where the agreements of the defendants were condemned by this court as violations of the Sherman Act, those agreements were clearly against principles of public policy long and firmly settled at the common law and were obviously injurious to the public interest.

It is settled that the Constitution itself, as well as statutes passed in pursuance thereof, are to be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the Constitution. *United States* v. *Wong Kim Ark*, 169 U. S., 649; *Moore* v. *United States*, 91 U. S., 270, 274; *Minor* v. *Happersett*, 21 Wall., 162; *Ex parte Wilson*, 114 U. S., 417–422; *Boyd* v. *United States*, 116 U. S., 616, 624, 625; *Smith* v. *Alabama*, 124 U. S., 465.

This principle is more clearly called for when the commerce clause of the Constitution or statutes passed under it are claimed to interfere with personal rights such as the right of private contract. It is obvious that the sanctions of the common law, which our ancestors claimed and secured with respect to what were recognized as the absolute rights of individuals, viz.: the right of personal security, the right of personal liberty and the right to acquire and enjoy property, including the right and freedom of private contract), and which were regarded as natural, inherent and inalienable, and were vigorously asserted by the people of the American colonies, are to be resorted to in construing the provisions of the Constitution adopted by them, which, like the fifth amendment, were intended to secure those guarantees. The powers granted to the federal government, including the power to regulate commerce, were powers existing in the States.

Gibbons v. *Ogden*, 9 Wheaton, 1,227.

These powers were grounded upon the principles of Magna Charta and the Bill of Rights. As held by Chief Justice Marshall in *Gibbons* v. *Ogden* (p. 211), the right of the citizens to carry on commerce between State and State was not conferred by the Constitution, but the Constitution found it an existing right and gave to Congress the power to regulate it. And the declaration of the Chief Justice in that case (and repeated in the *Addyston Pipe case*, 175 U. S., 228), that the power granted to Congress to regulate commerce was complete in itself and acknowledged no limitations other than are prescribed in the Constitution, laid down no principle of absolutism in govern-

ment. In fact, the court was not there speaking of this power over the rights of persons, but of the limitation of the powers of the Federal government, as between that Government and the States.

But the Constitution itself preserves as against federal power all the personal rights which were embodied in the fundamental principles of the State governments. The ninth amendment which is part of the bill of rights, significantly provides that:

> "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

The rights so retained are those secured under our common law system of government and laws. And the guarantees of the fifth amendment are a limitation upon legislative as well as executive power. And it has been held that the United States cannot, any more than a State, interfere with private rights, except for legitimate governmental purposes, and are, equally with the States, prohibited from depriving persons or corporations of property without due process of law. *Sinking Fund cases*, 99 U. S., 700, 718–19. The right of contract is included within the property rights so protected. *Allgeyer* v. *Louisiana*, 165 U. S., 578, 591. The exercise of the power of Congress or of the legislature of a State to impose limitations upon the right of contract is no more than that same police power, which may be equally exercised by the States within their province, to limit the enjoyment by the citizen of his property, so far as the public welfare requires. But the exercise of this power is limited and not absolute; is subject to judicial review, and

cannot be put forward as an excuse for oppressive and unjust legislation.

Holden v. *Hardy*, 169 U. S., 391–2.
Lawton v. *Steele*, 152 U. S., 133, 137.

In construing the restrictions in the fifth amendment, which protects the personal rights of the citizen, and which were taken from Magna Charta, regard is to be had to those rights as they have always existed under our system of government and jurisprudence, and so in interpretating its guaranty that the citizen shall not be deprived of life, liberty or property without due process of law, it was held in *Murray's Lessee* v. *Hoboken*, 18 How., 272, 276–7, that in determining whether there was due process of law under an act of Congress, "we must look to those settled authorities and modes of proceeding existing in the common or statute law of England before the emigration of our ancestors and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of this country." To the same effect is *Holden* v. *Hardy*, 169 U. S., 366, 390. And so it was held that in construing the provisions of the Constitution providing for trial by jury, resort should be had to the common law, and that the jury referred to was the common law jury of twelve.

Callan v. *Watson*, 127 U. S., 540.
Thompson v. *Utah*, 170 U. S., 343.

In construing the acts of Congress as in determining their validity, it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*.

Boyd v. *United States*, 116 U. S., 616–635.

The significance of all this is apparent here, where, in order to sustain this bill of complaint, and decree, the power of Congress to *regulate* commerce, and the act of Congress passed in pursuance of it to promote the freedom of that commerce, must be given a meaning and scope which they have not before received, and under which the conduct of their interstate trade and commerce by these defendants, (private persons and corporations,) will be for the future regulated, not by specific provisions of law, but by the Federal court of equity, and the owners of the business will enter into all their contracts with the consciousness and risk that they are in contempt of the court if the presiding judge should deem that the "purpose or effect" of any such contract will be a restraint of that trade.

VI.

THE BILL OF COMPLAINT IS MULTIFARIOUS. AND IT IS BAD FOR MISJOINDER OF CAUSES AND OF PARTIES.

The bill of complaint contains more than five distinct and unconnected offenses. The alleged violation of the Sherman Act in the sixth paragraph, is entirely unconnected with those in the seventh, eighth, ninth and tenth paragraphs, and each of these alleged offenses is unconnected with any other.

The tenth paragraph itself contains as many distinct and unconnected offenses as there are defendants. It alleges that each of the defendants has engaged in arrangements and agreements with common carriers to receive and has received and will continue to receive unlawful rates for transportation. And under the allegations of that paragraph, it is to be taken that

the respective agreements and arrangements there charged are several and separate arrangements by each of the packing companies or defendants, made for its or his own business.

It would, as we conceive, be difficult to prepare a bill of complaint under the Sherman Act which would be multifarious or in which there would be a misjoinder or causes of action and parties, if this bill is free from those vices.

VII.

THE BILL OF COMPLAINT DOES NOT SET FORTH SUFFICIENT DEFINITE OR SPECIFIC FACTS TO SHOW ANY CAUSE OF ACTION OR TO REQUIRE ANSWER, BUT IS TOO GENERAL AND INDEFINITE.

This point of demurrer has been necessarily presented in the previous discussion of specific paragraphs of the bill. (*Supra*, pp. 17, 29-34.) What is there urged is to be taken as applicable as well to the demurrer to the whole bill as to the demurrers to specific parts. It has been shown that as the relief in equity under the Sherman Act is to enjoin violations of the act, which are the commission of crimes, it is necessary that the facts alleged in the bill show a violation of the act.

It is to the substantive facts alleged in the bill that we must alone look for the case presented, and not to epithets or adjectives or adverbs which may be added to qualify them. (*Magmae* v. *Thompson*, 2 Wall. Jr., 209; *Price* v. *Coleman*, 21 Fed. Rep., 357; *Moore* v. *Green*, 19 How., 69; *Van Weel* v. *Winston*, 115 U. S., 237-38; *St. Louis, &c., Ry. Co.* v. *Johnston*, 133 U. S., 577; *Wood* v. *Amory*, 105 N. Y., 278; *Hill* v. *Dyerville Co.*, 116 Cal., 135.

VIII.

THE DEMURRERS TO SO MUCH OF THE BILL AS PRAYS FOR ANSWER UNDER OATH, AND SO MUCH THEREOF AS PRAYS FOR DISCOVERY OF BOOKS, PAPERS, DOCUMENTS, ETC., ARE WELL TAKEN.

These points are clearly settled in our favor by the authorities. In *United States* v. *Saline Bank*, 1 Pet., 100, Chief Justice MARSHALL said:

> "This is a bill in equity for a discovery and relief. * * * The rule clearly is that a party is not bound to make any discovery, which would expose him to penalties, and this case falls within it."

Lord Redesdale lays down the rule as follows in his work on Equity Pleading:

> "It is a general rule that no one is bound to answer so as to subject himself to punishment in whatever manner that punishment may arise or whatever may be the nature of the punishment. If, therefore, the bill requires an answer which may subject the defendant to any pains or penalties he may demur to so much of the bill. As if a bill charges anything which, if confessed by the answer, would subject the defendant to any criminal prosecution, or to any particular penalties, as a usurious contract, maintenance, champerty, simony. And in such cases if the defendant is not obliged to answer the facts he need not answer the circumstances, though they have not such an immediate tendency to criminate."
>
> Mitford & Tyler's Equity Pleadings, 289.

And it is held that such a demurrer will not be regarded as any admission of the truth of the charge. *Id.*, note 4, citing 16 Ves., 69.

In *Livingston* v. *Tompkins*, 4 Johns. Ch., 415, 432, Chancellor Kent said:

> "There are numerous cases establishing the rule that no one is bound to answer so as to subject himself, either directly or eventually, to a forfeiture or penalty, or anything in the nature of a forfeiture or penalty."

The fourth and fifth amendments to the Constitution provide that protection.

The Sherman Act of July 2, 1890, under which this bill is brought, makes violations thereof criminal and punishable as misdemeanors. It also provides for the forfeiture of property.

This rule is, under the authorities, applied as well to the requirement of an answer, as to the requirement of a discovery in any other way, as by the production of books, etc., as here prayed.

1. *The answer under oath to the bill of complaint charging violations of this act, cannot, therefore, be required.*

The prayer for answer under oath is the prayer for a compulsory answer; and in case the defendant fails to answer he is in contempt of court, and his answer may be compelled by imprisonment or other punishment for contempt of court until such answer shall be given. In other words, in proper cases, the answer is compelled by the same methods as may be used to compel the answer of a witness. The principles governing each are the same; and this is plainly forbidden as well with respect to the requirement of an answer under oath in the bill as to the examination of a witness, by the fifth amendment, which it is settled is to be construed liberally.

Counselman v. *Hitchcock*, 142 U. S., 547.

2. *The demurrer to the prayer for discovery of books, papers, etc., is well taken.*

The petition prays discovery of the books, papers, documents, etc., whatsoever of defendants relating in any manner, directly or indirectly, to the purchase or shipment of live stock by them or their agents, or of the sale or shipment or delivery of fresh meats by them or their agents.

Such a prayer is clearly impertinent. It is not limited to any of the purposes of this suit.

Again it clearly violates the fourth and fifth amendments to the Constitution. This is settled by the authorities above cited. See also opinion of Lord *Camden* in *Entick* v. *Carrington*, 19 Howell's State Trials, 1,029; S. C., 2 Wils., 275; *Huckle* v. *Money*, 2 Wilson, 206, 207. The power to search for private papers had for a long time been exercised and maintained during the arbitrary reign of the Stuarts, and afterwards, and it was claimed by the secretary of state in *Entick* v. *Carrington*, but denied as "unsupported by one single citation from any law book extant."

The fourth amendment requires a showing of probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons or things to be seized. There is no compliance with that requirement.

In re Pacific Ry. Commn., 32 Fed. Rep., 241, 250, Mr. Justice FIELD said, and this is quoted with approval by the Supreme Court in *Interstate Com. Comm.* v. *Brimson*, 154 U. S., 479:

> "Of all the rights of the citizen, few are of greater importance or more essential to his peace

> and happiness than the right of personal security, and that involves not merely protection of his person from assault, but exemption of his private affairs, books and papers from the inspection and scrutiny of others. Without the enjoyment of this right all others would lose half their value."

The Sherman Act extends no immunity from prosecution or forfeiture of estate, and the immunity extended by the Interstate Commerce Act as amended by the act of February 11, 1893 (referred to in *Brown* v. *Walker*, 161 U. S., 591, and *Interstate Commerce Comm.* v. *Baird*, 194 *id.*, 45), does not cover this case. The provisions in section 3 of the act of February 19, 1903, which was passed since this proceeding, was commenced, does not apply to a proceeding brought under the Sherman Act. (U. S. Comp. Stat. Suppl., 1903, pp. 365–66.)

It is submitted that these demurrers should have been sustained and the bill dismissed, and that the decree should be reversed with that direction.

JOHN S. MILLER and
MERRITT STARR,
For Defendants.

In the Supreme Court of the United States

OCTOBER TERM, 1904.

SWIFT AND COMPANY ET AL., APPELLANTS,
v.
THE UNITED STATES. } No. 103.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This case was begun in the circuit court of the United States for the northern district of Illinois by a petition in equity, filed in pursuance of section 4 of the so-called anti-trust act of July 2, 1890 (26 Stat. L., 209), for the purpose of preventing and restraining the defendants below from violating the provisions of that act, the parts of which material to the issues in this suit read as follows:

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed

guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several States or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

* * * * *

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

The petition alleges that the defendants are engaged in the business of buying live stock, namely, cattle, sheep, and hogs, at various stock yards and competitive markets throughout the United States, and slaughtering and converting the same into fresh meats at plants maintained for that purpose in Nebraska, Missouri, Iowa, Minnesota, Wisconsin, Indiana, and Illinois; that they are also engaged in the business of selling such fresh meats, at the places where so prepared, to dealers and consumers in States other than where so prepared and sold, and in the Territories and in the District of Columbia and in foreign countries, and in shipping such meats, when so sold, from the places where prepared, over lines of transportation, to such dealers and consumers, pursuant to such sales; that they are also engaged in the business of shipping such fresh meats from the places where so prepared, over lines of transportation, to their agents located at or near the principal markets for such meats in other States than where prepared and in the Territories and the District of Columbia and foreign countries, and there selling the same through such agents to dealers and consumers; that of the total volume of trade and commerce in fresh meats among the several States and Territories and the District of Columbia, the defendants together control about 60 per cent, and that as to the trade and commerce in fresh meats among the several States and Territories and the District of Columbia and with foreign nations, the defendants should, and but for the acts complained of would, be and remain in free and

unrestrained competition with each other. The petition then states the facts constituting the gravamen of the action, to wit:

> Sixth. That the said defendants, in violation of the provisions of an act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and in order to restrain competition among themselves (which would otherwise exist) as to the purchase of live stock necessary to the production of the meats produced by them, have engaged in and intend to continue an unlawful combination and conspiracy between themselves for directing and requiring their respective purchasing agents at the said several stock yards and open and competitive markets where they customarily purchase such live stock, to wit, Kansas City and St. Joseph, Mo.; Omaha, Nebr.; Sioux City, Iowa; St. Paul, Minn.; East St. Louis and Chicago, Ill., aforesaid (the same being live stock produced and owned principally in other States and Territories of the United States, and shipped by the owners thereof to such stock yards and open markets for competitive sale to persons and corporations engaged in producing and dealing in fresh meats in the manner aforesaid), to refrain from bidding against each other, except perfunctorily and without good faith, when making purchases of such live stock on behalf of the said defendants, respectively, and by this means inducing and compelling such owners of such live stock to part with the same at such stock yards and open markets at prices less than they

would there receive if such bidding were really competitive as between the said purchasing agents of the said defendants; and the said defendants have caused and are causing their agents, respectively, to refrain from bidding accordingly, and have induced and are inducing each other and will, unless restrained by this honorable court, continue, in pursuance of such conspiracy, to induce each other to refrain from bidding as aforesaid, which aforesaid combination and conspiracy is one in restraint of trade and commerce among the several States and Territories of the said United States and the District of Columbia and with foreign countries.

Seventh. That the said defendants, in further violation of the provisions of the said act of Congress approved July 2, 1890, and in order to further restrain competition among themselves, which would otherwise exist, as to the purchase of live stock necessary to the production of the meats produced by them, and to obtain for themselves and each other undue advantage over the owners and shippers thereof in the buying of the same at the said several stock yards and open markets, have engaged in and intend to continue an unlawful combination and conspiracy among themselves for bidding up, through their respective purchasing agents, the prices of live stock for a few days at a time at the said stock yards and open markets, so that the market reports will show prices much higher than the state of the trade will warrant, and thereby inducing owners of such live stock in divers other of the said States and Territories

to simultaneously make large shipments of such live stock from such other States and Territories to such stock yards and open markets, instead of shipping the same to more natural and advantageous markets and at more natural and advantageous times in the due and proper course of such trade and business, and by this means and by reason of the resulting large offerings there of such live stock (and by thereupon refraining from bidding against each other for the same), obtaining such live stock at prices much less than it would bring in the regular way of trade if such combination and conspiracy were not so engaged in and continued, and have been and are now from time to time through their said agents so fraudulently bidding up the prices of such stock, and will, unless restrained by this honorable court, continue to do so; which said combination and conspiracy last aforesaid is also one in restraint of trade and commerce among the several States and Territories of the said United States and the District of Columbia and with foreign countries.

Eighth. That the said defendants, in violation of the provisions of the act of Congress of the said United States, approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and in order to restrain and destroy competition among themselves as to such trade and commerce, and monopolize such trade and commerce, have engaged in and intend to continue an unlawful combination and conspiracy to arbitrarily from time to time raise,

lower, and fix prices, and to maintain uniform prices at which they will sell, directly or through their respective agents, such fresh meats to dealers and consumers throughout the said States and Territories and the District of Columbia and foreign countries; and that the arbitrary raising, lowering, fixing, and maintaining of such prices, in pursuance of the said combination and conspiracy, is being and is to be effected through the action of divers of their agents and attorneys to your petitioner unknown, in secretly holding periodical meetings at some place or places to your petitioner unknown, and there agreeing upon the prices to be adopted by the said defendants, respectively, in such trade and commerce, to be enforced by them until at a subsequent meeting the same may be changed; which said prices are notified by letters and telegrams, in plain language and divers codes and ciphers; and they have been and are maintained by said defendants by adhering to the same in their sales made directly, and, among other ways, by collusively restricting and curtailing the quantities of such meats shipped by them in such trade and commerce to the markets aforesaid, whenever necessary or conducive to the maintaining of the prices so fixed; by imposing against each other divers penalties for any and all deviations by the said defendants or any of them from the prices so fixed; by establishing a uniform rule for the giving of credits to dealers throughout the said States and Territories and District of Columbia and foreign countries, and for the conduct of

the business of such dealers, with penalties as between the said defendants for violations thereof; by notifying each other of the delinquencies of the said dealers, and keeping what is commonly known as a "black list" of such delinquents, and refusing to sell such meats to any of such delinquents; which said combination and conspiracy above set forth is one in restraint and monopoly of commerce among the several States and Territories of the said United States and the District of Columbia and with foreign countries.

Ninth. And the said defendants, in violation of the provisions of the said act of Congress approved July 2, 1890, have engaged in and intend to continue an unlawful combination and conspiracy to direct and require their respective agents at and near many of the markets for such fresh meats throughout the said several States and Territories and the District of Columbia to arbitrarily make and impose uniform charges for cartage for the delivery, upon making sales to dealers and consumers in those markets, of the meats shipped to them through the said agents by the said defendants, respectively, from their said several points of preparation of the same, when no such charges have been or are customary in such trade and commerce, or would be made but for said combination and conspiracy, thereby increasing the charges for such meats to said dealers and consumers in such markets and preventing the purchase of the same by those who are unable or unwilling to pay more than the price of the

meats themselves without such additional charge; which said combination is also in restraint of such trade and commerce aforesaid.

Tenth. That notwithstanding the common carriers by railroad subject to the provisions of the laws of the United States for the regulation of commerce have established and published, and do now and will establish and publish, respectively, their schedules of rates, fares, and charges for the transportation of live stock to the places of its conversion into such meats as aforesaid, and for the transportation of such meats as aforesaid, and notwithstanding such rates were, and are, and will be the only rates for the transportation as aforesaid of such articles, the said defendants, intending thereby to monopolize and attempt to monopolize the commerce aforesaid and prevent competition therein, have all and each engaged in and will continue arrangements and agreements with divers officers and agents of such common carriers, whereby said defendants were to receive and have received and will continue to receive, by means of rebates and other devices, unlawful rates for such transportation, much less than the said lawful rates, and were to exclusively enjoy and share said unlawful advantage to the exclusion of competitors and would-be competitors and the general public, and have accordingly so enjoyed and shared them, and will, unless restrained by this honorable court, continue to do so; and by force of the consequent inability of competitors and would-be competitors to engage or continue in such commerce without ruinous

> loss have monopolized and are monopolizing and will continue to monopolize the said commerce, and have attempted and are attempting and will attempt to monopolize such commerce in live stock and fresh meats among the States and Territories and the District of Columbia and with foreign countries; which scheme to monopolize is also a combination and conspiracy in restraint of trade and commerce among the States and Territories and the District of Columbia and with foreign countries.

Then follows the prayer for relief, namely, that the defendants and their agents be enjoined "from continuing each and any of the unlawful proceedings aforesaid, and from attempting to monopolize, in the manner aforesaid, or in any other manner, and by any other means and devices, the commerce aforesaid, or any part thereof, or any part of the trade or commerce among the States and Territories and District of Columbia, and with foreign nations, and especially from refraining and instructing their respective purchasing agents to refrain from bidding against each other, except perfunctorily and without good faith, in making purchases of live stock, and from inducing each other to so refrain, and from engaging in any combination or conspiracy, understanding, or arrangement, for the purpose of bringing about such refraining from competitive bidding, and from bidding up the prices of live stock at the stock yards and open markets higher than the state of the trade will warrant, and from arbitrarily raising, lowering, fixing, and maintaining prices of their and each other's products,

and from maintaining prices so fixed and uniform prices by adhering to the same in their sales, or by restricting the quantities of meats shipped, or by imposing penalties upon themselves and each other, or by making uniform rules for credits to dealers, or by making and keeping what is commonly known as a 'blacklist' of delinquent dealers, or by refusing to sell meats to such delinquents, or by any other method or device; and from agreeing with each other and acting in concert, with a view to fixing prices or terms for the sale or delivery of said meat products so sold, in such manner as to prevent free competition in, and restrain or monopolize, such commerce; and that they be enjoined from imposing a charge for cartage for the delivery of their products upon making sales to dealers and consumers; and from asking and receiving, by means of rebates or otherwise, from railroad companies less than the established and published rates for the transportation of their live stock and meat products."

The petition also prayed "discovery of the books, papers, accounts, letters, telegrams, records, and documents whatsoever of the defendants relating in any manner, directly or indirectly, to the purchase or shipment of live stock by them or their agents, or to the sale or shipment or delivery of fresh meats by them or their agents."

The defendants demurred to the petition on the following grounds:

> (1) The bill of complaint does not allege any contract, combination, or conspiracy in restraint of interstate or foreign trade or commerce

within the meaning of said act of Congress of July 2, 1890.

(2) The bill of complaint does not allege any acts of defendants monopolizing or attempting to monopolize, or combining or conspiring to monopolize, any part of such trade or commerce within the meaning of said act.

(3) If the act of Congress in question should be given a construction which would sustain this bill of complaint, such act would violate the provisions of the Constitution of the United States.

(4) Said bill is multifarious.

(5) There is a misjoinder of causes of action and of persons in said bill, as alleged in said demurrers.

(6) The said bill of complaint and the allegations and charges therein are not sufficiently definite or specific, but are too general and indefinite.

The circuit court overruled the demurrers and ordered a preliminary injunction to issue in accordance with the prayer of the petition, and also ordered the defendants to answer the petition. The defendants did not answer, but elected to stand upon their demurrers. Whereupon the circuit court ordered the petition to be taken pro confesso and entered the following decree, making the preliminary injunction perpetual, to wit:

> And now, upon motion of the said attorney, the court doth order that the preliminary injunction heretofore awarded in this cause, to restrain the said defendants, and each of them, their respective agents and attorneys, and all

other persons acting in their behalf, or in behalf of either of them, or claiming so to act, from entering into, taking part in, or performing any contract, combination, or conspiracy the purpose or effect of which will be, as to trade and commerce in fresh meats between the several States and Territories and the District of Columbia, a restraint of trade in violation of the provisions of the act of Congress approved July 2, 1890, entitled, "An act to protect trade and commerce against unlawful restraints and monopolies," either by directing or requiring their respective agents to refrain from bidding against each other in the purchase of live stock; or collusively and by agreement to refrain from bidding against each other at the sales of live stock; or by combination, conspiracy, or contract raising or lowering prices or fixing uniform prices at which the said meats will be sold, either directly or through their respective agents; or by curtailing the quantity of such meats shipped to such markets and agents; or by establishing and maintaining rules for the giving of credit to dealers in such meats, the effect of which rules will be to restrict competition; or by imposing uniform charges for cartage and delivery of such meats to dealers and consumers, the effect of which will be to restrict competition; or by any other method or device the purpose and effect of which is to restrain commerce as aforesaid; and also from violating the provisions of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," by combining or

conspiring together, or with each other and others, to monopolize or attempt to monopolize any part of the trade and commerce in fresh meats among the several States and Territories and the District of Columbia by demanding, obtaining, or, with or without the connivance of the officers or agents thereof, or of any of them, receiving from railroad companies or other common carriers transporting such fresh meats in such trade and commerce, either directly or by means of rebates, or by any other device, trans portation of or for such meats, from the points of preparation and production of the same from live stock or elsewhere, to the markets for the sale of the same to dealers and consumers in other States and Territories than those wherein the same are so prepared, or the District of Columbia, at less than the regular rates which may be established or in force on their several lines of transportation, under the provisions in that behalf of the laws of the said United States for the regulation of commerce, be, and the same is hereby, made perpetual.

But nothing herein shall be construed to prohibit the said defendants from agreeing upon charges for cartage and delivery, and other incidents connected with local sales, where such charges are not calculated to have any effect upon competition in the sales and delivery of meats; nor from establishing and maintaining rules for the giving of credit to dealers where such rules in good faith are calculated solely to protect the defendants against dishonest or irresponsible dealers; nor from curtailing the quantity of meats shipped to a given market where

the purpose of such arrangement in good faith is to prevent the overaccumulation of meats as perishable articles in such markets.

Nor shall anything herein contained be construed to restrain or interfere with the action of any single company or firm, by its or their officers or agents (whether such officers or agents are themselves personally made parties defendant hereto or not) acting with respect to its or their own corporate or firm business, property, or affairs.

The defendants then appealed to this court and made the following assignment of errors:

1. The circuit court erred in overruling and in not sustaining the general demurrers of these defendants, respectively, to the said bill of complaint or petition of the United States.

2. The circuit court erred in not holding and ruling that the said bill of complaint or petition does not allege any contract, combination, or conspiracy in restraint of interstate or foreign trade or commerce within the meaning of said act of Congress, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and in not sustaining the said respective demurrers on that ground.

3. The circuit court erred in not holding and ruling that said bill of complaint does not allege the acts of defendants monopolizing or attempting to monopolize or combining or conspiring to monopolize any part of said trade or commerce within the meaning of said act, and in

not sustaining said respective demurrers to said bill or petition on that ground.

4. The circuit court erred in not holding and ruling that if the said act of Congress of July 2, 1890, has and is to be given a construction which would make the said supposed acts of the said defendants in the said bill or petition alleged a violation thereof, for which the said defendants would be subject to the penalties, injunctions, or processes by said act prescribed, the said act would and does violate the provisions of the Constitution of the United States, and in not sustaining the said respective demurrers on that ground.

5. The circuit court erred in not holding and ruling that there is in said bill or petition a misjoinder of causes of action and of persons, as alleged in the said demurrers, and in not sustaining the said respective demurrers on that ground.

6. The circuit court erred in not holding and ruling that the said bill of complaint and the allegations and charges therein are not sufficiently definite or specific, but are too general and indefinite to call for or require any answer from the said respective defendants, and in not sustaining the said respective demurrers to said bill or petition upon that ground.

7. The said circuit court did not have jurisdiction to enter the said decree nor to award the said injunction against these defendants.

8. The circuit court erred in not holding and ruling that said bill or petition was multifarious, and in not sustaining the respective demurrers of these defendants thereto upon that ground.

9. The circuit court erred in not holding and ruling that said bill or petition was for several and distinct matters and causes, in many or some of which these respective defendants, or some of them, are not interested or concerned, and in not sustaining the demurrers thereto upon that ground.

10. The circuit court erred in not holding and ruling that the respective matters and causes in the sixth paragraph of said bill or petition, and the matters and causes in the said seventh paragraph of said bill or petition, and the respective matters and causes in the said eighth paragraph of said bill or petition, and the respective matters and causes in the said ninth paragraph of said bill or petition, and the said respective matters and causes in the said tenth paragraph of said bill or petition, and the said matters and causes in the said eleventh paragraph of said bill or petition, were distinct and different and independent and unconnected matters and causes, and not the same matters or causes, and that the same were improperly joined in the said bill or petition; and in not sustaining the said respective demurrers upon that ground.

11. The circuit court erred in not holding that the supposed unlawful combination and conspiracy between the said defendants for directing and requiring their respective purchasing agents at the said several stock yards and markets to refrain from bidding against each other, except perfunctorily and without good faith, in said sixth paragraph of said bill or petition charged; and the supposed unlawful combination and conspiracy among themselves for bidding up,

through their respective purchasing agents, the prices of live stock for a few days at said stock yards and markets, in said seventh paragraph of said bill or petition charged; and the said supposed unlawful combination and conspiracy to raise, lower, and fix prices and to maintain uniform prices at which they will sell fresh meats to dealers and consumers throughout the States and Territories of the United States, and the District of Columbia, and foreign countries, in the said eighth paragraph of said bill or petition charged; and the said supposed unlawful combination and conspiracy to direct and require their respective agents at and near many of the markets for such fresh meats through the said States and Territories and the District of Columbia to arbitrarily make and impose uniform charges for cartage for the delivery, upon making sales to dealers and consumers in those markets, of the meats shipped to them through the said agents by the said defendants, respectively, from their several points of preparation of the same, in the said ninth paragraph of said bill or petition charged; and the said supposed engaging in and continuing of arrangements and agreements with divers officers and agents of common carriers, in the said tenth paragraph of said bill or petition charged, whereby it is therein charged said defendants were to receive, and have received, and will continue to receive, unlawful rates for transportation of live stock and meats; and the said supposed combination and conspiracy of said defendants with each other and with the railroad companies and others

to complainant unknown, to obtain a monopoly of the supply and distribution of fresh meats throughout the United States and its Territories and shipments thereof to foreign countries, in said eleventh paragraph of said bill or petition charged, are, respectively, distinct and different and unconnected and independent supposed combinations, conspiracies, matters, and causes, and that the same are improperly joined in the said bill, and in not sustaining said respective demurrers to said bill or petition on that ground.

12. That said circuit court erred in not sustaining the said respective demurrers to so much of the said bill or petition as seeks discovery of the books, papers, accounts, letters, telegrams, records, and documents of said respective defendants, and in overruling the said respective demurrers. And the court erred in not holding and ruling that the said prayer and portion of said petition last mentioned, seeking discovery as aforesaid, does not contain any showing of probable cause, supported by oath or affirmation, as required by the fourth amendment to the Constitution of the United States, or otherwise comply with said fourth amendment, but violates, and if allowed would violate, the provisions of the fourth amendment to the Constitution of the United States and would violate the provisions of the fifth amendment to the Constitution of the United States.

13. The said circuit court erred in not sustaining the said respective demurrers to so much of the said bill or petition as seeks that these respective defendants may answer or make any

discovery of or as to any matter or cause of complaint therein alleged, and in overruling the same. And the court erred in not holding and ruling that the said prayer and portion of said petition last mentioned, seeking answer or discovery as aforesaid, does not contain any showing of probable cause, supported by oath or affirmation, as required by the fourth amendment to the Constitution of the United States, or otherwise comply with said fourth amendment, but violates, and if allowed would violate, the the provisions of the fourth amendment to the Constitution of the United States and would violate the provisions of the fifth amendment to the Constitution of the United States.

14. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the sixth paragraph thereof, and as alleges that said defendants have engaged in and intend to continue in an unlawful combination and conspiracy between themselves for directing and requiring their respective purchasing agents at the said several stock yards and markets where they customarily purchase live stock necessary to the production of meats produced by them, and in said paragraph sixth mentioned, to refrain from bidding against each other except perfunctorily and without good faith, when making purchases of such live stock on behalf of the said defendants, respectively, and by that means inducing and compelling such owners of such live stock to part with the same at prices less than they would receive at such stock yards and markets if such

bidding were competitive as between said purchasing agents, and that defendants have caused and are causing their agents to refrain from bidding accordingly, and have induced and are inducing each other and will, unless restrained by said court, continue in pursuance of such supposed conspiracy, to induce each other to refrain from bidding as aforesaid, which said supposed combination and conspiracy is there alleged to be one in restraint of trade and commerce among the several States and Territories of the said United States and the District of Columbia and with foreign countries.

And the said defendants and appellants, respectively, say that the said circuit court erred in not holding and ruling that the said paragraph sixth does not allege any acts or facts to constitute the violation of said act of Congress, approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," but was and is too general and indefinite to require answer from the said respective defendants; and in not holding and ruling that the said sixth paragraph does not allege any contract, combination, or conspiracy on the part of the respective defendants in restraint of interstate or foreign trade or commerce within the meaning of said act; and does not allege any monopolizing or attempting to monopolize, or any combination or conspiring to monopolize, any part of interstate or foreign trade or commerce by the said defendants, within the meaning of said act; and in not holding and ruling that the supposed contracts or acts alleged and complained of in said sixth

paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

15. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the seventh paragraph thereof and as alleges that said defendants have engaged in and intend to continue an unlawful combination and conspiracy among themselves for bidding up, through their respective purchasing agents, the prices of live stock for a few days at a time at the said stock yards and markets, so that the market reports will show prices much higher than the state of the trade will warrant, and thereby inducing owners of such live stock in divers other of the said States and Territories to simultaneously make large shipments of such live stock from such other States and Territories to said stock yards and open markets, instead of shipping the same to more natural and advantageous markets and at more natural and advantageous times in the due and proper course of such trade and business, and by this means and by reason of the resulting large offerings thereof such live stock (and by thereupon refraining from bidding against each other for the same), obtaining such live stock at prices much less than it would bring in the regular way of trade if such combination and conspiracy were not so engaged in and continued; and have been and are now from time to time through their said agents so fraudulently bidding up the prices of such live stock, and will, unless restrained by said court, continue

so to do, and that said combination and conspiracy last aforesaid is one in restraint of trade and commerce among the several States and Territories of said United States and the District of Columbia and with foreign countries.

And the said defendants and appellants, respectively, say that the said circuit court erred in not holding and ruling that the said paragraph seventh does not allege any acts or facts to constitute the violation of said act of Congress, approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," but was and is too general and indefinite to require answer from the said respective defendants; and in not holding and ruling that the said seventh paragraph does not allege any contract, combination, or conspiracy on the part of the respective defendants in restraint of interstate or foreign trade or commerce within the meaning of said act; and does not allege any monopolizing or attempt to monopolize, or any combination or conspiring to monopolize any part of interstate or foreign trade or commerce by the said defendants, within the meaning of said act; and in not holding and ruling that the supposed contracts or acts alleged and complained of in said seventh paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

16. The circuit court erred in not sustaining and in overruling the respective demurrers of of these defendants to so much of said bill or petition as is contained in the eighth paragraph

thereof and as alleges that the said defendants have engaged in and intend to continue an unlawful combination and conspiracy to arbitrarily from time to time raise, lower, and fix prices, and to maintain uniform prices at which they will sell, directly or through their respective agents, such fresh meats to dealers and consumers throughout the said States and Territories and the District of Columbia and foreign countries; and that the arbitrary raising, lowering, fixing, and maintaining such prices, in pursuance of the said combination and conspiracy, is being and is to be effected through the action of divers of their agents and attorneys in secretly holding periodical meetings at some place or places, and there agreeing upon the prices to be adopted by said defendants, respectively, in said trade and commerce, to be enforced by them until at a subsequent meeting the same may be changed, and that said prices are notified by letters and telegrams in plain language and divers codes and ciphers, and they have been and are maintained by defendants by adhering to the same in their sales made directly, and, among other ways, by collusively restricting and curtailing the quantities of such meats shipped by them in such trade and commerce to the markets aforesaid, whenever necessary or conducive to the maintaining of the prices so fixed; by imposing against each other divers penalties for any and all deviations by said defendants, or any of them, from the prices so fixed; by establishing a uniform rule for the giving of credits to dealers throughout the said States and Territories and District of Columbia

and foreign countries, and for the conduct of the business of such dealers, with penalties as between the said defendants for violations thereof; by notifying each other of the delinquencies of the said dealers and keeping what is commonly known as a "black list" of such delinquents and refusing to sell such meats to any of such delinquents; which said supposed combination and conspiracy is there alleged to be one in restraint and monopoly of commerce among the several States and Territories of the said United States and the District of Columbia and with foreign countries.

And the said defendants and appellants, respectively, say that the said circuit court erred in not holding and ruling that the said paragraph eighth does not allege any acts or facts sufficient to constitute the violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," but was and is too general and indefinite to require answer from the said respective defendants; and in not holding and ruling that the said eighth paragraph does not allege any contract, combination, or conspiracy on the part of the respective defendants in restraint of interstate or foreign trade or commerce, within the meaning of said act; and does not allege any monopolizing or attempt to monopolize, or any combination or conspiring to monopolize any part of interstate or foreign trade or commerce by the said defendants, within the meaning of said act; and in not holding and ruling that the supposed contracts or acts alleged and complained of in said

eighth paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

17. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the ninth paragraph thereof and as alleges that the said defendants have engaged in and intend to continue an unlawful combination and conspiracy to direct and require their respective agents at and near many of the markets for such fresh meats throughout the said several States and Territories and the District of Columbia to arbitrarily make and impose uniform charges for cartage for the delivery, upon making sales to dealers and consumers in those markets, of the meats shipped to them through the said agents by the said defendants respectively, from their said several points of preparation of the same, when no such charges have been or are customary in such trade and commerce, or would be made but for said supposed combination and conspiracy, thereby increasing the charges for such meats to said dealers and consumers in such markets, and preventing the purchase of the same by those who are unable or unwilling to pay more than the price of the meats themselves without such additional charge; which said supposed combination is there alleged to be in restraint of said trade and commerce aforesaid.

And the said defendants and appellants respectively say that the said circuit court erred in not holding and ruling that the said paragraph ninth does not allege any acts or facts

sufficient to constitute the violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," but was and is too general and indefinite to require answer from the said respective defendants. And in not holding and ruling that the said ninth paragraph does not allege any contract, combination or conspiracy on the part of the respective defendants in restraint of interstate or foreign trade or commerce within the meaning of said act; or any combination or conspiring to monopolize any part of interstate or foreign trade or commerce by the said defendants, within the meaning of said act. And in not holding and ruling that the supposed contracts or acts alleged and complained of in said ninth paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

18. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the tenth paragraph thereof and as alleges that the schedule of rates, fares, and charges for the transportation of live stock to the places of its conversion into meats, as alleged in said bill or petition, which have been established and published by the common carriers by railroads, subject to the provisions of the laws of the United States for the regulation of commerce, were and are and will be the only lawful rates for the transportation, as aforesaid, of such articles, and that the defendants intending thereby to monopolize and attempt to monop-

olize the commerce aforesaid and prevent competition therein have all and each engaged in and will continue arrangements and agreements with divers officers and agents of such common carriers, whereby said defendants were to receive and have received and will continue to receive, by means of rebates and other devices, unlawful rates for such transportation much less than the said lawful rates, and were to exclusively enjoy and share such unlawful advantage, to the exclusion of competitors and would-be competitors and the general public, and have accordingly so enjoyed and shared them, and will, unless restrained by the court, continue to do so; and by force of the consequent inability of competitors and would-be competitors to engage or continue in such commerce without ruinous loss, have monopolized and are monopolizing and will continue to monopolize the said commerce, and have attempted and are attempting and will attempt to monopolize such commerce in live stock and fresh meats among the States and Territories and the District of Columbia and with foreign countries; which supposed scheme to monopolize it is there alleged is also a combination and conspiracy in restraint of trade and commerce among the States and Territories and the District of Columbia and with foreign countries.

And the said defendants and appellants respectively say that the said circuit court erred in not holding and ruling that the said paragraph tenth does not allege any acts or facts sufficient to constitute the violation of said act of Congress approved July 2, 1890, entitled "An act

to protect trade and commerce against unlawful restraints and monopolies," but was and is too general and indefinite to require answer from the said respective defendants. And in not holding and ruling that the said tenth paragraph does not allege any contract, combination, or conspiracy on the part of the respective defendants in restraint of interstate or foreign trade or commerce, within the meaning of said act; or any combination or conspiring to monopolize any part of interstate or foreign trade or commerce by the said defendants, within the meaning of said act. And in not holding and ruling that the supposed contracts or acts alleged and complained of in said tenth paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

And the circuit court erred in not holding and ruling that the supposed acts alleged in said tenth paragraph, as therein alleged, are not each the acts of all of the said defendants; but they are, respectively, alleged acts of one or more of the defendants acting separately in making each for itself or himself the alleged arrangements and agreements with common carriers there referred to; and that the said tenth clause and the bill in those allegations is multifarious, and that there is a misjoinder therein of the alleged causes of action of the parties defendant in that behalf. And the circuit court erred in not holding and ruling that the supposed acts of the respective defendants in said tenth clause alleged are not forbidden by the act in question or by any other law, and that either or any of the defendants acting

separately with respect to his or its own business, is not, and within the sanction of the Federal Constitution could not be, forbidden from agreeing for or receiving the rates of transportation referred to in said tenth clause of said bill.

19. The circuit court erred in not sustaining and in overruling the respective demurrers of these defendants to so much of said bill or petition as is contained in the eleventh paragraph thereof, and as alleges that the said defendants now are and for years past have been in combination and conspiracy with each other and with the railroad companies and others to obtain a monopoly of the supply and distribution of fresh meats throughout the United States and its Territories and shipments thereof to foreign countries.

And the said defendants and appellants, respectively, say that the circuit court erred in not holding and ruling that the said paragraph eleventh does not allege any acts or facts sufficient to constitute the violation of said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," but was and is too general and indefinite to require answer from the said respective defendants; and in not holding and ruling that the said eleventh paragraph does not allege any contract, combination, or conspiracy on the part of the respective defendants in restraint of interstate or foreign trade or commerce within the meaning of said act; or any combination or conspiracy to monopolize any part of interstate

or foreign trade or commerce by the said defendants within the meaning of said act; and in not holding and ruling that the supposed contracts or acts alleged and complained of in said eleventh paragraph are not any part of and do not regulate or affect interstate or foreign trade or commerce.

20. The said circuit court erred in rendering and entering its decree in favor of the said complainant and in awarding or issuing any injunction thereon against the said respective defendants, and in decreeing and ordering that the injunction therein mentioned should be made permanent.

21. The circuit court erred in not holding and decreeing in favor of the said respective defendants and in not dismissing said bill or petition.

The questions raised by this very prolix assignment of errors are reducible to four:

(1) Is the petition multifarious?

(2) Does the petition disclose a misjoinder of parties?

(3) Did the circuit court err in not sustaining the demurrers to the bill in its aspect as a bill for discovery?

(4) Do the facts stated in the petition and admitted by the demurrers disclose a combination or conspiracy to restrain or monopolize any part of interstate or foreign commerce?

Consideration of the first, second, and third questions will be deferred until the fourth is answered, as that is the vital question in the case.

There are no questions of fact to be discussed, as the allegations of the petition stand confessed.

THE ARGUMENT.

I.

Do the facts stated in the petition and admitted by the demurrers disclose a combination or conspiracy to restrain or monopolize any part of interstate or foreign commerce?

There are three branches to this question: (*a*) Do the facts show a combination? If so (*b*), does the combination restrain or monopolize trade or commerce? And (*c*), if the facts show a combination to restrain or monopolize trade or commerce, does the combination operate upon and directly affect interstate or foreign trade or commerce?

(*a*) and (*b*) The combination or conspiracy which the Government is seeking to destroy and which it was the aim of the petition in this case to set forth is one between all the principal American producers or packers of fresh meats for the purpose of jointly controlling the market for those products throughout the entire United States so as to maintain uniform prices therefor and destroy competition in the sale thereof to dealers and consumers.

It is not our purpose to resolve the conspiracy into its parts and attempt to show that each step in its formation or each of the means employed to effect its main object is a separate offense. It seems more agreeable to reason and more consistent with the theory on which the petition was framed to treat the conspiracy in the argument as it is in reality, that is, as a unit, as

a single scheme with interdependent parts, each of which has a distinct office to perform toward the attainment of a single end, which is to control and restrain the fresh-meat trade; and then if it is shown that the whole is unlawful so must the parts be.

Viewing the petition from this standpoint, it is a little difficult to see what ground there is for the contention that it does not disclose a combination or conspiracy to restrain trade, as that term has been defined by this court, when it is averred therein and admitted by the defendants that the latter control about 60 per cent of the trade in fresh meats in the United States, and that they have entered into a "combination and conspiracy to arbitrarily, from time to time, raise, lower, and fix prices, and to maintain uniform prices at which they will sell, directly or through their respective agents, such fresh meats to dealers and consumers throughout the said States and Territories, and the District of Columbia and foreign countries; and that the arbitrary raising, lowering, fixing, and maintaining of such prices, in pursuance of the said combination and conspiracy, is being and is to be effected through the action of divers of their agents and attorneys to your petitioner unknown, *in secretly holding periodical meetings* at some place or places to your petitioner unknown, *and there agreeing upon the prices to be adopted by the said defendants*, respectively, in such trade and commerce, to be enforced by them until at a subsequent meeting the same may be changed; which said prices are notified by letters and telegrams in plain

language and divers codes and ciphers; and they have been and are maintained by said defendants by adhering to the same in their sales made directly, and, among other ways, by exclusively restricting and curtailing the quantities of such meats shipped by them in such trade and commerce to the markets aforesaid, whenever necessary or conducive to the maintaining of the prices so fixed; by imposing against each other divers penalties for any and all deviations by the said defendants or any of them from the prices so fixed; by establishing a uniform rule for the giving of credits to dealers throughout the said States and Territories and District of Columbia and foreign countries, and for the conduct of the business of such dealers, with penalties as between the said defendants for violations thereof; by notifying each other of the delinquencies of the said dealers, and keeping what is commonly known as a 'black list' of such delinquents, and refusing to sell such meats to any of such delinquents;" and by requiring "their respective agents at and near many of the markets for such fresh meats throughout the said several States and Territories and the District of Columbia to arbitrarily make and impose uniform charges for cartage for the delivery, upon making sales to dealers and consumers in those markets, of the meats shipped to them through the said agents by the said defendants."

Here is the definite and specific allegation that the defendants, who are independent and, under normal conditions, competing producers, have combined to-

gether to fix and maintain uniform prices for their meats, and that to effect that object they cause their agents and attorneys to hold periodical meetings and there agree upon such uniform prices, which the defendants, respectively, adhere to. Then follows a circumstantial account of the methods agreed upon to maintain uniformity in prices and guard against competition, secret or open, on the part of any member of the combination. This is the basic allegation of the petition. It is a full, complete statement of the ultimate facts constituting the principal combination or conspiracy, and the means agreed upon to enforce its object, and we are unable to see how anything could be added to the averment without entering upon a recital of evidence, which is not only not required but would be repugnant to the most elementary principles of pleading. The allegation, ex vi termini, shows that it is not open to the objection pointed out In re Greene, 52 Fed. 104, and relied upon by counsel here, namely, the objection of "following simply the language of the act" and affirming that the defendants "'engaged in a combination,"' or "'made contracts in restraint of such trade or commerce,"' or "'monopolized,"' or "'attempted to monopolize' the same."

Other paragraphs of the petition show the steps and means by which the object of the principal combination—the uniform control and regulation of the sales and prices of fresh meats throughout the United States—is more certainly accomplished, the combination itself strengthened and supported, and its grasp upon the

fresh meat industry of the nation made firmer and completer, and hence more powerful and oppressive. Thus paragraphs 6 and 7 state how the defendants have, through their combination, reached back and shut out competition in the purchase of live stock, from which the fresh meats are produced, and appropriated to themselves a part of the cattle raisers' legitimate profit, by directing and requiring their purchasing agents, at the markets where the live stock is customarily purchased, to refrain from bidding against each other when making purchases, and to bid up the prices of live stock for a few days at a time so as to induce large shipments, and then desist from bidding, thereby causing a large supply and no demand, and consequently low prices. And in paragraph 10 it is alleged, and the allegation stands admitted, that in furtherance of the aforesaid combination and scheme to monopolize, the defendants have engaged in arrangements and agreements with various common carriers for rebates and concessions in transportation not enjoyed by their competitors, by means of which they have been able to undersell their competitors until they crushed them and monopolized the trade.

We shall not stop to argue that the combination thus set forth is in restraint of trade, for if in the entire field of the law concerning monopolies and restraints of trade there is a single proposition to which all courts now yield assent, it is that a combination, conspiracy, or agreement between independent manufacturers or producers of a necessary of life to fix and maintain

uniform prices for their products, or otherwise to suppress competition with each other, is an unlawful restraint upon trade (*United States* v. *E. C. Knight & Co.*, 156 U. S., 1, 16; *United States* v. *Trans-Missouri Freight Association*, 166 U. S., 290; *United States* v. *Joint Traffic Association*, 171 U. S., 505; *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S., 211; *Northern Securities Co.* v. *United States*, 193 U. S., 197; *Chesapeake & Ohio Fuel Co.* v. *United States*, 115 Fed. Rep., 610; judgments of Lord Bramwell and Lord Hannen in *Mogul S. S. Co.* v. *McGregor*, L. R. App. Cas. (1892), 46, 58; *Morris Run Coal Co.* v. *Barclay Coal Co.*, 68 Pa. St., 155, 173; *Nester et al.* v. *Continental Brewing Co.*, 161 Pa. St., 473; *Salt Co.* v. *Guthrie*, 35 Ohio St., 166; *People* v. *Sheldon*, 139 N. Y., 251; *Cummings* v. *Union Blue Stone Co.*, 164 N. Y., 405; *Trenton Potteries Co.* v. *Olyphant*, 58 N. J. Eq., 507; *Craft* v. *McConoughby*, 79 Ill., 346; Noyes on Intercorporate Relations, p. 513, note 1, where the cases are collected); and necessarily the means agreed upon to effect the unlawful object of the combination or conspiracy are inseparable parts of the combination or conspiracy itself, and along with it fall within the condemnation of the law.

(*c*) The third and remaining branch of the question is, Does the combination or conspiracy in controversy operate upon interstate or foreign commerce, or is its operation confined to commerce carried on wholly within State lines?

The contention advanced by opposing counsel is that the sales of live stock to the defendants and the sales by them of the prepared meats, set out in para-

graphs 6, 7, and 8 of the petition, are not interstate, but intrastate, sales, and therefore, conceding that the defendants have combined and conspired to suppress competition in those sales, the combination does not operate upon interstate commerce.

We shall attempt to show (1) that whether those particular sales are interstate transactions or not, the combination charged in the petition was designed to, and does, by maintaining uniform prices for fresh meats, suppress competition between the defendants, who are independent producers, in an area covering more States than one, and therefore operates upon and restrains interstate commerce; and (2) that the sales in question are not exclusively intrastate transactions, as is contended, but are within the body of interstate commerce.

1. Interstate commerce or commerce *among* the several States, according to Chief Justice Marshall's definition in *Gibbons* v. *Ogden*, is "*commerce which concerns more States than one*" (9 Wheat. 1, 194), and a combination or agreement between independent manufacturers or producers to fix and control prices and suppress competition, as has already been shown (supra, p. 36), is a restraint upon commerce. "* * * in *all* the prior cases in this court the anti-trust act has been construed as forbidding any combination which by its necessary operation destroys or restricts free competition among those engaged in interstate commerce; in other words, that *to destroy or restrict free competition in interstate commerce was to restrain such commerce.*"

(*Northern Securities Co.* v. *United States*, 193 U. S., 197, 337.) Now, if interstate commerce is commerce which concerns more States than one, and if a combination of independent producers to suppress competition between its members is a restraint upon commerce, it must follow that a combination of independent producers to fix and control prices and suppress competition between each other in an area covering more States than one is in restraint of interstate commerce.

Does the petition in this case disclose such a combination? We have previously endeavored to show, by the admitted allegations of the petition, that the defendants have combined to fix and control the prices of fresh meats and suppress competition with each other in the sale thereof as well as in the purchase of live stock. The only part of the question left unanswered, therefore, is, Does the combination operate in a territory embracing more States than one? Does it fix prices and suppress competition in a territory embracing more States than one? The allegations of the petition, which are to be taken as true, furnish a conclusive answer to this inquiry. Paragraph 1 states that the defendants are engaged in buying live stock at points named in the States of Illinois, Nebraska, Iowa, Missouri, and Minnesota, and in converting it into fresh meats at plants in those and other States. Paragraph 2 states that they sell and ship portions of the meats so prepared to dealers and consumers in other States and Territories, and paragraph 3 states that they ship portions of such meats to their agents in other States

and Territories to be sold to dealers and consumers. Paragraph 4 states that the defendants control about 60 per cent of the trade in fresh meats in the United States. Paragraph 6 avers that "in order to restrain competition among themselves as to the purchase of live stock necessary to the production of the meats produced by them [they] have engaged in and intend to continue an unlawful combination and conspiracy between themselves for directing and requiring their respective purchasing agents at the said several stock yards and open and competitive markets where they customarily purchase such live stock, to wit: *Kansas City and St. Joseph, Mo.; Omaha, Nebr.; Sioux City, Iowa; St. Paul, Minn.; East St. Louis and Chicago, Ill.* * * * to refrain from bidding against each other, except perfunctorily and without good faith, when making purchases of such live stock. * * *" And paragraph eight states that "in order to restrain and destroy competition among themselves * * * [defendants] have engaged in and intend to continue an unlawful combination and conspiracy to arbitrarily, from time to time, raise, lower, and fix prices, and to maintain uniform prices at which they will sell, directly or through their respective agents, such fresh meats to dealers and consumers *throughout the said States and Territories and the District of Columbia and foreign countries;* and that the arbitrary raising, lowering, fixing, and maintaining of such prices, in pursuance of the said combination and conspiracy, is being and is to be effected through the action of divers of their agents and attorneys

* * * in secretly holding periodical meetings * * * and there agreeing upon the prices to be adopted by the said defendants."

Here are the undisputed averments, in terms as specific and unmistakable as it is possible to make them, that the defendants have combined and agreed to destroy competition among themselves by maintaining and charging uniform prices for fresh meats "*throughout the said States and Territories and the District of Columbia and foreign countries;*" and that they have combined and agreed to refrain from competing with each other in the purchase of live stock at markets located in half a dozen different States, naming them.

It is impossible to say with even a color of reason that these facts, which can not be denied, do not show a combination between the defendants to suppress competition between themselves in an area embracing more States than one; and if the preceding argument is sound such a combination is a restraint upon interstate commerce, and it is immaterial to inquire whether the particular purchases and sales made by the defendants are, technically, interstate or intrastate transactions.

There is nothing unreasonable or novel in the conclusion that a combination may restrain interstate commerce, although the individual transactions of its members might, standing alone and viewed separate and apart from the purpose and necessary effect of the whole combination, be intrastate in character. In *Montague & Co.* v. *Lowry* (193 U. S., 38), the decision turned on the following rule of an association of deal-

ers in tile in the State of California and manufacturers in other States:

> SEC. 7. No dealer and active member of this association shall purchase, directly or indirectly, any tile or fireplace fixtures from any manufacturer or resident or traveling agent of any manufacturer not a member of this association, *neither shall they sell or dispose of, directly or indirectly, any unset tile for less than list prices to any person or persons not a member of this association, under penalty of expulsion from the association.*

And counsel contended (see brief for plaintiff in error, p. 13) that—

> It is important to recur again to the character of the dealers who are members of the association, as being local dealers, doing business in San Francisco or within a radius of 200 miles thereof. The point of this is, that the transactions in unset tile at list prices under section 7, supra, are local transactions, intrastate transactions, in no respect taking on the quality of interstate commerce.
>
> Now, we make two points: First, that the transactions in unset tile at list prices being purely local, are not within the purview of the act of Congress, and to this end we cite the late case of the *Addyston Pipe & Steel Co.* v. *United States* (175 U. S., 211).

To which this court replied, not denying the premises but very emphatically denying the conclusion:

> It is urged that the sale of unset tile provided for in the seventh section of the by-laws

> is a transaction wholly within the State of California, and is not in any event a violation of the act of Congress, which applies only to commerce between the States. The provision as to this sale is but a part of the agreement, and it is so united with the rest as to be incapable of separation without at the same time altering the general purpose of the agreement. The whole agreement is to be construed as one piece, in which the manufacturers are parties as well as the San Francisco dealers, and the refusal to sell on the part of the manufacturers is connected with and a part of the scheme which includes the enhancement of the price of the unset tile by the San Francisco dealers. *The whole thing is so bound together that when looked at as a whole the sale of unset tile ceases to be a mere transaction in the State of California and becomes a part of a purpose which, when carried out, amounts to and is a contract or combination in restraint of interstate trade or commerce.*

It was also recognized in *Addyston Pipe & Steel Co.* v. *United States* (175 U. S., 211, 240), that the character of a combination—that is, whether or not it is interstate in its operation—is decided, not by the nature of the particular transactions of its individual members, but by the extent of the territory in which it operates—in which it controls prices and sales and suppresses competition. If that territory embraces more States than one the combination restrains interstate commerce. Said this court:

> While no particular contract regarding the furnishing of pipe and the price for which it should

> be furnished was in the contemplation of the parties to the combination at the time of its formation, yet it was their intention, as it was the purpose of the combination, to directly and by means of such combination to increase the price for which all contracts for the delivery of pipe within the territory above described should be made, and the latter result was to be achieved by abolishing all competition between the parties to the combination. The direct and immediate result of the combination was, therefore, necessarily a restraint upon interstate commerce in respect of articles manufactured by any of the parties to it to be transported beyond the State in which they were made. The defendants, by reason of this combination and agreement, could only send their goods out of the State in which they were manufactured, for sale and delivery in another State, upon the terms and pursuant to the provisions of such combination. As pertinently asked by the court below, was not this a direct restraint upon interstate commerce in those goods?

If it were true that a combination can not be said to restrain interstate commerce except where the individual transactions of its members, standing alone and viewed apart from the extent and purpose of the combination, are interstate in character, and accepting as sound appellant's contention (to be examined presently) that where a packing company in Illinois ships meats to its agent in New York and the agent sells them there, the sale is an intrastate, not an interstate, transaction, the way would be opened wide for the easy evasion of the existing anti-trust law as well as all other

laws that Congress might level against combinations and monopolies in restraint of interstate commerce; for independent and competing manufacturers or producers wishing to combine need only establish selling agencies in the various States and agree upon a uniform scale of prices to be charged in sales by their respective agents in each State, and such sales not being interstate sales, the combination would not affect interstate commerce.

2. But while it is true, as we believe and have attempted to show, that the determination of the question whether a combination in restraint of trade operates upon interstate or only intrastate commerce does not depend upon whether the individual transactions of its members, if standing alone and viewed separate and apart from the purpose and necessary effect of the whole combination, are interstate or intrastate in character, and that the petition here discloses a combination which operates upon *interstate* commerce, whatever may be the character of the individual transactions of its several members, it is in addition true in this case that the individual transactions of the members of the combination do fall within the jurisdiction conferred upon Congress by the commerce clause of the Constitution.

These transactions consist of (*a*) the defendants' purchases of live stock (petition, pars. 1 and 6); (*b*) the sales and shipments of fresh meats made directly by the defendants to dealers and consumers in the several States (petition, pars. 2 and 8); and (*c*) the sales of

fresh meats to dealers and consumers in the several States by agents of the defendants located in those States (petition, pars. 3 and 8).

(*a*) From all over the stock-raising section, embracing many different States, cattle, sheep, and hogs are habitually shipped to the great live-stock markets at Chicago, Omaha, Sioux City, St. Joseph, Kansas City, East St. Louis, and St. Paul for sale, as set out in the petition, to those, the defendants chief among them, engaged in the business of converting live stock into fresh meats for human consumption. The shipments are made with the express and sole purpose of sale as soon as market conditions will permit, and the sales are made while the cattle yet remain in first hands, that is, in the hands of the owners or their agents, and in the ordinary form or condition in which cattle are shipped from one country or State to another, which is analogous to the form or condition of the original package in the case of merchandise. (*Austin* v. *Tennessee*, 179 U. S., 343, 359.)

The cattle are not dealt with in a commercial way from the time of their arrival until their sale to the defendants and others, but are simply fed and cared for. No act is done with reference to them that would cause them to become mixed with the general mass of local property. Now, it may be that a distinction should be made between what may be called an interstate sale proper and in the full sense of the term—that is, a sale between persons negotiating and dealing from two or more different States, and a sale, at its destination and while it still remains in the original state or package,

of an article of commerce sent from another State. But so far as the result in this instance is concerned it is a distinction without a difference. If the sales of live stock set forth in the petition do not fall within the first of these classes they certainly fall within the second, and that brings them within the protection of the Federal power over commerce and therefore within the protection of the anti-trust act; for, as this court has decided, the right to transport articles of commerce from one State to another includes the right of the owner or consignee to sell them in the latter free from any burden or restraint that the States might attempt to impose (*Brown* v. *Maryland*, 12 Wheat., 419; *Bowman* v. *Chicago and Northwestern Railway Co.*, 125 U.S., 465; *Leisy* v. *Hardin*, 135 U. S., 100; *Rhodes* v. *Iowa*, 170 U. S., 412), and, a fortiori, free from any burden or restraint that a combination of individuals might attempt to impose (In re Debs, 158 U. S., 564, 581).

In the case of *Hopkins* v. *United States*, 171 U. S., 578, 590, this court said that "the selling of an article at its destination, which has been brought from another State, * * * may be regarded as an interstate sale and one which the importer was entitled to make" although "the services of the individual employed at the place where the article is sold are not so connected with the subject sold as to make them a portion of interstate commerce."

(*b*) The second paragraph of the petition states that the defendants "are * * * engaged in the business of selling * * * fresh meats, at the several places where they are so prepared, to dealers and con-

sumers in divers States and Territories * * * other than those wherein the said meats are so prepared and so sold as aforesaid, * * * and shipping the same meats, when so sold, from the said places of their preparation * * * to such dealers and consumers pursuant to such sales.

It is perfectly plain from the context that the pleader intended by this language to describe sales of fresh meat owned and held in one State to dealers and consumers located in and dealing from other States and the consequent shipment of the meat to the purchasers, and the court below understood the words to express that intention (Record, p. 30). It is safe to say that even counsel for the defendants will concede that sales of that description are interstate sales. But it is contended that the phrase, "at the places where so prepared," limits the description to sales begun and completed at those places, and therefore wholly within State lines. Even if it could not be shown that those words were inserted for another and entirely different purpose, the unreasonableness of that construction would still be apparent. The intention was to describe sales made by the defendants directly to dealers and consumers throughout the United States as contradistinguished from sales made through the defendants' agents, and set forth in the succeeding paragraph; and the idea is absurd that in transacting these sales the purchasers, except perhaps in a few isolated instances, travel all the way from their respective domiciles to Chicago, Kansas City, Omaha, or other places where

the defendants have plants, when they can just as well deal from the places where they reside and do business. Therefore, even if the language were susceptible of two constructions, an elementary canon requires that that one be adopted which leads to a sensible rather than to an absurd conclusion. But what the phrase in question really means is that at the time the sales are made the meats are at the places where they were prepared, and the object in emphasizing that point was to bring out more markedly the diverse situs of the seller and the subject-matter of the sale, on the one hand, and the buyer, on the other, as is shown by the phrase immediately following, to wit, "to dealers and consumers in States *other than where so prepared and sold.*" At any rate, however, paragraph 2 merely contains matter of description and inducement, and must be read in conjunction with the stating part of the petition, which alleges, inter alia, that "in order to restrain and destroy competition among themselves" the defendants have engaged in a "combination and conspiracy to arbitrarily from time to time raise, lower, and fix prices, and to maintain uniform prices at which they will *sell, directly or through their respective agents, such fresh meats to dealers and consumers throughout the said States and Territories and the District of Columbia and foreign countries.*"

If, then, the sales made directly by the defendants to dealers and consumers throughout the United States (petition, pars. 2 and 8) are interstate sales, and if the

decisions of this court have settled, as we think has been shown, that a combination to control and suppress competition in such sales is a combination in restraint of interstate commerce, the petition in this case, having shown that much, can not in any event be dismissed, even should it be held to have failed in all other respects.

(*c*) Paragraph 3 of the petition states that the defendants are engaged in shipping fresh meats from their plants in certain States to their respective agents at and near the principal markets in other States and Territories for sale by such agents to dealers and consumers in those States and Territories. Upon the question whether or not the sales made by these agents under the circumstances set forth are within the body of interstate commerce, there is nothing to add to the cogent argument of the circuit judge, who said in his opinion (Record, pp. 30, 31):

> Unquestionably it is interstate commerce when purchasers from other States buy directly from the defendants and have the meats shipped to them by the vendors. The *situs* of such a transaction, both as to initiatory intercourse and as to transportation in furtherance of the exchange, includes a State other than the one from which defendants deal.
>
> I think the same is true of meat sent to agents and sold from their stores. The transaction in such case, in reality, is between the purchaser and the agent's principal. The agents represent the principal at the place where the exchange takes place, but the transaction as a commercial

entity includes the principal, and includes him as dealing from his place of business. Indeed, such privity exists between the principal and the transaction that he could, at the instant, as a citizen of another State, sue upon the transaction in the Federal courts; nor have I any question that if the conditions of this case were reversed, so that defendants were invoking the shelter instead of seeking to escape the obligations of the commerce clause, Federal law would be found equal to the protection asked.

I need not dwell on the contention of defendants that the fresh meats in the hands of the agents are subject to ordinary State taxation, or upon the cases cited in this connection. It is enough to say that because a thing can be taxed by the State, it does not follow that it lies outside the body of interstate commerce; for commerce, interstate as well as domestic, is subject to the police and taxing power of the State so long as the exercise of such power does not interfere with the National Government's exclusive right of regulation. (*Addyston Pipe and Steel Co.* v. *United States*, 175 U. S., 235; *Austin* v. *Tennessee*, 179 U. S., 349; Prentice & Egan on the Commerce Clause of the Constitution, p. 27.) Nor shall I differentiate the *Knight* case, the *Hopkins* case, and other cases urged upon me as applicable to the case under consideration. A study of these cases will show that they are not in conflict with the views already expressed.

II AND III.

Is the petition multifarious, or does it disclose a misjoinder of parties?

Acting on an intimation from the circuit judge counsel for the Government did not discuss these questions in the court below. The objections rest wholly on the hypothesis that the acts set forth in paragraphs 6, 7, 8, 9, and 10 of the petition are separate, distinct, and unconnected transactions. But this hypothesis is unwarranted and incorrect. The acts referred to have been shown in the course of the argument to be closely connected. The bare reading of the petition is, in fact, enough to satisfy the mind that they are all steps or means in the accomplishment of a single aim, namely, the control of the market for fresh meats throughout the United States, and that being the case they should be dealt with collectively as interdependent parts of a single scheme, each part having a distinct office to fill in the attainment of the common end. If, then, as thus clearly appears, the hypothesis upon which these objections are based is an inaccurate one, they fall to the ground.

Numerous courts have held that the test for multifariousness "is whether the bill, fairly construed, *shows a single object and seeks to enforce one general and common right*" (14 Encyl. Pl. and Pr., 198, and the many cases there cited); and certainly the petition in this case responds unqualifiedly to that test.

In Bates on Federal Equity Procedure, Vol. I, secs. 135 and 195, there is a very satisfactory discussion of the subject of multifariousness, based on the decisions

of this and other courts there cited. In section 195 the author states his conclusion that—

> If separate, distinct, and different matters, having no connection with each other, are joined in one bill against several defendants, a part of whom have no interest in or connection with some of the distinct matters for which suit is brought, so that such defendants are put to the unnecessary trouble and expense of answering and litigating matters in the bill in which they are not interested, and which are not so connected with the matters in which they are interested as to render it proper for the convenient administration of justice to litigate and dispose of the whole in one suit, the bill will be demurrable for multifariousness; but if the object of the suit be single, but different persons have separate interests in distinct questions which arise out of the single object, or if the bill presents a common point of litigation, in which all of the parties are interested, and the decision of which will affect the whole subject-matter, and will settle the rights of all the parties to the suit, although the defendants have separate interests in distinct questions arising out of the suit, the bill will not be demurrable for multifariousness.

IV.

Did the circuit court err in not sustaining the demurrers to the bill in its aspect as a bill for discovery?

That it did not is clear upon several grounds:

1. The demurrers to the discovery assigned no cause of demurrer except the general one that the "petitioner

hath not in and by said bill or petition in that behalf made or stated such a case as doth or ought to entitle them [it] to any such discovery." This, of course, is the usual formula for the general demurrer and the same form of words was used in stating the ground of the demurrer to the relief. Now, as the discovery in this case is merely incidental to the relief, and as the defendants assigned no special cause of demurrer to the discovery in addition to the general objection, that the bill was without equity, assigned as ground for demurrer to both relief and discovery, and as the circuit court had decided that the bill was not without equity, but did state a case for relief, the objection to the discovery fell with that decision and hence was properly overruled, without reliance upon the long-established principle that a single demurrer to a whole bill can not be overruled in part and sustained in part but must be overruled in its entirety if any part of the bill can be sustained.

The claim that to enforce the discovery prayed for would expose the defendants to unreasonable searches and seizures and force them to furnish evidence that might incriminate them and subject them to penalties and forfeitures, in violation of the fourth and fifth amendments to the Constitution, was not made upon the record until after the circuit court had rendered its opinion and entered its decree. It was brought into the case for the first time in the argument of defendants' counsel. That the circuit court did not consider that the question had been presented to it in such a way as

to demand an answer is most cogently demonstrated by the circumstance that it mentions it neither in its statement of the grounds of demurrer nor in its opinion.

2. The demurrers in this case are demurrers to the whole bill. They are none the less demurrers to the whole bill because after stating objections to the bill as a whole they assign the same objections to particular parts of the bill. In *Livingston* v. *Story* (9 Pet., 632, 654), presently to be examined, a demurrer directed to "the matters contained in said bill" and also to "*any or either of such matters*," was dealt with as, and deemed, a demurrer to the whole bill; in fact, there was no dispute upon the point.

Now, if it be so that the demurrers in this case are demurrers to the whole bill, the circuit court, finding that the demurrer to the relief should be overruled, had no other course except to overrule the entire demurrer even though it were of opinion that the demurrer to the discovery were well taken, since the well-settled rule of equity pleading is that a demurrer to a whole bill can not be sustained as to part of the bill and overruled as to part, but must be overruled as to the whole if any part of the bill is good and entitles the complainant to any relief. Fletcher, Eq. Pl., secs. 203, 204; Story, Eq. Pl. (10th ed.), secs. 443 and 444; *Livingston* v. *Story*, 9 Pet., 632, 654, 658; *Parker* v. *Simpson*, 62 N. E. (Mass.), 401; *Metler's Admns.* v. *Metler*, 18 N. J. Eq., 270, 273. When the defendants leveled their demurrers at the relief as well as the discovery, instead of answering as to the relief and demurring as to the

discovery, they did so at their peril; that is, at the risk of losing on both points if they failed as to the relief. *Livingston* v. *Story*, supra.

In Fletcher on Equity Pleading (secs. 203 and 204) it is said:

> A demurrer to the whole bill must be overruled if the bill, taken altogether, entitles the complainant to some kind of relief. * * * Thus where a bill seeks discovery and relief and is sustainable for relief a demurrer to the whole bill can not be sustained, though the complainant is not entitled to the discovery.
>
> * * * * *
>
> A demurrer can not be good in part and bad in part. If any part of a bill is good and entitles complainant to either relief or discovery, a demurrer to the whole bill can not be sustained.

In *Livingston* v. *Story*, supra, the defendant demurred to the whole bill, and for cause showed that the complainant had not made such a case as entitles him, in a court of equity, to any discovery touching the matters contained in the bill, or any or either of such matters, nor to entitle the complainant to any relief touching any of the matters complained of (p. 654 of the report). In overruling the demurrer this court said:

> And if any part of the bill is good and entitles the complainant either to relief or discovery, a demurrer to the whole bill can not be sustained. It is an established and universal rule of pleading in chancery that a defendant may meet a complainant's bill by several modes

of defense. He may demur, answer, and plead to different parts of a bill. *So that if a bill for discovery and relief contains proper matter for the one and not for the other, the defendant should answer the proper and demur to the improper matter. But if he demurs to the whole bill the demurrer must be overruled.* 5 Johns. Chan., 186; 1 Johns. Ca., 433.

In *Parker* v. *Simpson*, supra, there were several demurrers and several grounds of demurrer, as here, and, as here, the demurrers were directed at the discovery as well as the relief. In its opinion the supreme judicial court of Massachusetts said:

> It would serve no useful purpose to go over, seriatim, the grounds of the various demurrers. We shall here notice only those which are insisted on in the defendant's brief, and we shall consider them topically in the order there suggested. The others call for no remark, except to say that they do not seem to us sound.
>
> 1. As to discovery. The defendant insists that the plaintiffs are not entitled to the discovery sought in the first prayer, that the defendant disclose under oath a true statement and account of all the real and personal property transferred and delivered to him as aforesaid, and of the rents, proceeds, and income thereof, and of all property purchased with funds so received, and the income and proceeds thereof. But we do not think that he is in a position to avail himself of this contention, *even if there is anything in it.* The bill is for relief [that is, that was its primary aim], and not for discovery.

> The part of the demurrer which refers to this matter is to the whole bill. *The bill is sustainable for relief. Therefore the demurrer, being to the whole, can not be sustained.* Story, Eq. Pl., sec. 312.

The case of *Metler's Admns.* v. *Metler*, supra, is virtually parallel, at all points, with that at bar. The bill there was for relief and discovery. "The defendants demur[red] to the bill generally, and allege[d] as a special ground of demurrer to the discovery, that the defendants, being husband and wife, are not either of them bound to make any answer or discovery that may affect the claims or rights of the other" (p. 272). In overruling the demurrer the chancellor said (pp. 273 and 274):

> As the complainants are entitled, upon the case made in their bill, to have this note delivered up to be canceled, the demurrer can not be sustained to the relief. It is bad in part. But it is a well-established rule in equity when a demurrer is too extensive, or bad in part, that it must be wholly overruled. Story's Eq. Pl., secs. 443, 448, 692; Daniell's Chan. Prac. (3d Amer. ed.), 568 and 608.
>
> This is a demurrer to the whole bill, *and includes both the relief and discovery.* The causes of demurrer assigned, which together must be coextensive with the demurrer, are in part to the relief and in part to the discovery. And then by that rule, *although the demurrer might be good to the discovery*, yet, being bad in part, it must be wholly overruled. * * *

This court, in Miller *v.* Ford (Saxt., 365), adopted the modern English rule, that when a plaintiff on a bill praying relief is not entitled to relief he is not entitled to discovery. But this doubtful exception does not affect the converse proposition, *that where, on demurrer to the whole bill, the complainant is held entitled to the relief the demurrer can not be sustained as to the discovery, even if a demurrer to the discovery alone would be good.*

* * * * *

The general rule is that in all cases where the complainant is entitled to relief he is entitled to discovery. But to this there are exceptions, as in cases where the discovery would subject the defendant to indictment, forfeiture, or penalty, when it would be a breach of professional confidence, or would be of matters irrelevant and immaterial to the relief sought; in all which and similar cases a demurrer may be taken to the *discovery alone.* (1 Daniell's Chan. Prac., 571, 588–607.)

3. In an act of Congress approved February 25, 1903 (32 Stats., 903), there is the following provision:

That for the enforcement of the provisions of the act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and all acts amendatory thereof or supplemental thereto, and of the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, and all acts amendatory thereof

> or supplemental thereto, and sections seventy-three, seventy-four, seventy-five, and seventy-six of the act entitled "An act to reduce taxation, to provide revenue for the Government, and other purposes," approved August twenty-seventh, eighteen hundred and ninety-four, the sum of five hundred thousand dollars, *to be immediately available*, is hereby appropriated, out of any money in the Treasury not heretofore appropriated, to be expended under the direction of the Attorney-General in the employment of special counsel and agents of the Department of Justice to conduct proceedings, suits, and prosecutions under said acts in the courts of the United States: *Provided, That no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under said acts: Provided further*, That no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

The underscored portion of the above enactment is exactly similar to the act of Congress of February 11, 1893 (27 Stat. 443), applicable to proceedings under the acts to regulate commerce, in construing which in the case of *Interstate Commerce Commission* v. *Baird*, 194 U. S., 25, 44, this court said:

> It is considered in the answers filed in the circuit court that to require the production of these contracts would be to compel the witnesses to furnish evidence against themselves which

might result in forfeiture of estate in violation of the fifth amendment to the Constitution; [and] would subject the parties to unreasonable searches and seizures of their papers contrary to the fourth amendment, * * *

* * * As to the constitutional objection based upon the fifth amendment, the act as amended February 11, 1893, expressly extends immunity from prosecution or forfeiture of estate because of testimony given in pursuance of the requirements of the law. The full consideration of the subject and the decision of this court in *Brown* v. *Walker*, 161 U. S., 591, renders further consideration of this objection unnecessary.

The origin and interpretation of the fourth amendment to the Constitution, securing immunity from unreasonable searches and seizures, was fully discussed by Mr. Justice Bradley in the leading case of *Boyd* v. *United States*, 116 U. S. 616. In that opinion the learned justice points out the analogy between the fourth and fifth amendments, and the object of both to protect a citizen from compulsory testimony against himself, which may result in his punishment or the forfeiture of his estate, or the seizure of his papers by force, or their compulsory production by process for the like purpose. * * *

As we have seen, the statute protects the witness from such use of the testimony given as will result in his punishment for crime or the forfeiture of his estate. Testimony given under such circumstances presents scarcely a suggestion of an unreasonable search or seizure * * *

Now, counsel for defendants has shown (brief filed in lower court, p. 69) that there is no difference between obtaining evidence from a defendant while he is on the witness stand and obtaining it from him through his answer to a bill in equity, and upon this point I concur in his argument.

In *Brown* v. *Walker*, supra, it was aptly said that—

> If, as was justly observed in the opinion of the court below, witnesses standing in Brown's position were at liberty to set up an immunity from testifying, the enforcement of the interstate commerce law or other analogous acts, wherein it is for the interest of both parties to conceal their misdoings, would become impossible, since it is only from the mouths of those having knowledge of the inhibited contracts that the facts can be ascertained. While the constitutional provision in question is justly regarded as one of the most valuable prerogatives of the citizen, its object is fully accomplished by the statutory immunity * * * (p. 610).

It follows from the principles announced in the above-mentioned decisions of this court that since the passage of the act of February 25, 1903 (supra, p. 59), witnesses and defendants in proceedings under the anti-trust act may not object to giving testimony or producing documentary evidence on the constitutional ground that the testimony or evidence sought might expose them to unreasonable searches or seizures, or incriminate them, or subject them to penalties and forfeitures. And it was not until after the passage of the act of February 25, 1903, that the defendants in this

case were under any rule or requirement to answer the Government's petition. The thirty-fourth equity rule of this court provides that when a demurrer to a bill is overruled the defendant shall be assigned to answer the next succeeding rule day or at some other period consistent with justice and the rights of the defendant. He is thus under no obligation to answer until he is assigned to do so. Now in this case the order of the court below overruling the demurrers and assigning the defendants to answer on or before April 21, 1903, was not entered until April 4, 1903, several months after the immunity act was passed. During the whole period of time, therefore, in which the defendants were under any obligation or requirement whatever to answer they had the protection of the act of February 25, 1903, and that alone is a conclusive answer to their contention that the circuit court erred in not sustaining their demurrers to the discovery.

In conclusion, it may be remarked that judges have differed as to the validity of aggregations of capital effected by some form of organic union between several smaller and competing corporations, and economists are far from agreeing that such aggregations, within limitations, are hurtful. So too, associations of manufacturers to regulate competition within a restricted area have not always been condemned by courts and have sometimes been approved by publicists. But has a responsible voice yet been heard to justify, legally or economically, a conspiracy or agreement between nearly all the producers of a commodity necessary to

life by which the confederates acquire absolute control and dominion over the production, sale, and distribution of that commodity throughout the entire territory of a nation, with the power, at will, to raise prices to the consumer of the finished product and lower prices to the producer of the raw material? Yet such is that now at the bar of this court. That there is a conspiracy to control the market of the nation for fresh meats, that it does control it, and that its control is merciless and oppressive, are facts known of all men. The broad question here is, Does the Government's petition, with its statements of fact standing unchallenged, discover that conspiracy to the court? We submit that it does and that the decree of the circuit court should in all things be affirmed.

WILLIAM H. MOODY,
Attorney-General.

W. A. DAY,
Assistant to the Attorney-General.

O

Supreme Court of the United States.

No. 103.—October Term, 1904.

Swift and Company et al., Appellants, vs. The United States. } Appeal from the Circuit Court of the United States for the Northern District of Illinois.

[January 30, 1905.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an appeal from a decree of the Circuit Court, on demurrer, granting an injunction against the appellants' commission of alleged violations of the act of July 2, 1890, c. 647, (26 Stat. 209,) "to protect Trade and Commerce against unlawful Restraints and Monopolies." It will be necessary to consider both the bill and the decree. The bill is brought against a number of corporations, firms and individuals of different States and makes the following allegations. 1. The defendants (appellants) are engaged in the business of buying live stock at the stock yards in Chicago, Omaha, St. Joseph, Kansas City, East St. Louis and St. Paul, and slaughtering such live stock at their respective plants in places named, in different States, and converting the live stock into fresh meat for human consumption. 2. The defendants "are also engaged in the business of selling "such fresh meats, at the several places where they are so prepared, to "dealers and consumers in divers States and Territories of the said United "States other than those wherein the said meats are so prepared and sold "as aforesaid, and in the District of Columbia, and in foreign countries, "and shipping the same meats, when so sold from the said places of their "preparation, over the several lines of transportation of the several rail-"road companies serving the same as common carriers, to such dealers "and consumers, pursuant to such sales." 3. The defendants also are engaged in the business of shipping such fresh meats to their respective agents at the principal markets in other States, &c., for sale by those agents in those markets to dealers and consumers. 4. The defendants together control about six-tenths of the whole trade and commerce in fresh meats among the States, Territories and District of Columbia, and, 5, but for the acts charged would be in free competition with one another.

6. In order to restrain competition among themselves as to the purchase of live stock, defendants have engaged in, and intend to continue, a combination for requiring and do and will require their respective purchasing agents at the stock yards mentioned, where defendants buy their live stock,

(the same being stock produced and owned principally in other States and shipped to the yards for sale,) to refrain from bidding against each other, "except perfunctorily and without good faith," and by this means compelling the owners of such stock to sell at less prices than they would receive if the bidding really was competitive.

7. For the same purposes the defendants combine to bid up, through their agents, the prices of live stock for a few days at a time, "so that the market reports will show prices much higher than the state of the trade will warrant," thereby inducing stock owners in other States to make large shipments to the stock yards to their disadvantage.

8. For the same purposes, and to monopolize the commerce protected by the statute, the defendants combine "to arbitrarily, from time to time raise, lower, and fix prices, and to maintain uniform prices at which they will sell" to dealers throughout the States. This is effected by secret periodical meetings, where are fixed prices to be enforced until changed at a subsequent meeting. The prices are maintained directly, and by collusively restricting the meat shipped by the defendants, whenever conducive to the result, by imposing penalties for deviations, by establishing a uniform rule for the giving of credit to dealers, &c., and by notifying one another of the delinquencies of such dealers and keeping a black list of delinquents, and refusing to sell meats to them.

9. The defendants also combine to make uniform charges for cartage for the delivery of meats sold to dealers and consumers in the markets throughout the States, &c., shipped to them by the defendants through the defendants' agents at the markets, when no charges would have been made but for the combination.

10. Intending to monopolize the said commerce and to prevent competition therein, the defendants "have all and each engaged in and will continue" arrangements with the railroads whereby the defendants received, by means of rebates and other devices, rates less than the lawful rates for transportation, and were exclusively to enjoy and share this unlawful advantage to the exclusion of competition and the public. By force of the consequent inability of competitors to engage or continue in such commerce, the defendants are attempting to monopolize, have monopolized, and will monopolize the commerce in live stock and fresh meats among the States and Territories, and with foreign countries, and, 11, the defendants are and have been in conspiracy with each other, with the railroad companies and others unknown, to obtain a monopoly of the supply and distribution of fresh meats throughout the United States, &c. And to that end defendants artificially restrain the commerce and put arbitrary regulations in force affecting the same from the shipment of the live stock from the plains to the final distribution of the meats to the consumer. There is a prayer for an injunction of the most comprehensive sort, against all

the foregoing proceedings and others, for discovery of books and papers relating directly or indirectly to the purchase or shipment of live stock, and the sale or shipment of fresh meat, and for an answer under oath. The injunction issued is appended in a note.*

To sum up the bill more shortly, it charges a combination of a dominant proportion of the dealers in fresh meat throughout the United States not to bid against each other in the live stock markets of the different States, to bid up prices for a few days in order to induce the cattle men to send their stock to the stock yards, to fix prices at which they will sell, and to that end to restrict shipments of meat when necessary, to establish a uniform rule of credit to dealers and to keep a black list, to make uniform and improper charges for cartage, and finally to get less than lawful rates from the railroads to the exclusion of competitors. It is true that the last charge is not clearly stated to be a part of the combination. But as it is alleged that the defendants have each and all made arrangements with the railroads, that they were exclusively to enjoy the unlawful advantage, and that their intent in what they did was to monopolize the commerce and to prevent competition, and in view of the general allegation to which we shall refer, we think that we have stated correctly the purport of the bill. It will be noticed further that the intent to monopolize is alleged for the first

---

*"And now, upon motion of the said attorney, the court doth order that the preliminary injunction heretofore awarded in this cause, to restrain the said defendants and each of them, their respective agents and attorneys, and all other persons acting in their behalf, or in behalf of either of them, or claiming so to act, from entering into, taking part in, or performing any contract, combination or conspiracy, the purpose or effect of which will be, as to trade and commerce in fresh meats between the several States and Territories and the District of Columbia, a restraint of trade, in violation of the provisions of the act of Congress approved July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' either by directing or requiring their respective agents to refrain from bidding against each other in the purchase of live stock; or collusively and by agreement to refrain from bidding against each other at the sales of live stock; or by combination, conspiracy or contract raising or lowering prices or fixing uniform prices at which the said meats will be sold, either directly or through their respective agents; or by curtailing the quantity of such meats shipped to such markets and agents; or by establishing and maintaining rules for the giving of credit to dealers in such meats, the effect of which rules will be to restrict competition; or by imposing uniform charges for cartage and delivery of such meats to dealers and consumers, the effect of which will be to restrict competition; or by any other method or device, the purpose and effect of which is to restrain commerce as aforesaid; and also from violating the provisions of the act of Congress approved July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' by combining or conspiring together, or with each other and others, to monopolize or attempt to monopolize any part of the trade and commerce in fresh meats among the several States and

time in the eighth section of the bill as to raising, lowering and fixing prices. In the earlier sections, the intent alleged is to restrain competition among themselves. But after all the specific charges there is a general allegation that the defendants are conspiring with one another, the railroads and others, to monopolize the supply and distribution of fresh meat throughout the United States, &c., as has been stated above, and it seems to us that this general allegation of intent colors and applies to all the specific charges of the bill. Whatever may be thought concerning the proper construction of the statute, a bill in equity is not to be read and construed as an indictment would have been read and construed a hundred years ago, but it is to be taken to mean what it fairly conveys to a dispassionate reader by a fairly exact use of English speech. Thus read this bill seems to us intended to allege successive elements of a single connected scheme.

We read the demurrer with the same liberality. Therefore we take it as applying to the bill generally for multifariousness and want of equity, and also to each section of it which makes a charge and to the discovery. The demurrer to the discovery will not need discussion in the view which we take concerning the relief, and therefore we turn at once to that.

Territories and the District of Columbia, by demanding, obtaining, or, with or without the connivance of the officers or agents thereof, or of any of them, receiving from railroad companies or other common carriers transporting such fresh meats in such trade and commerce, either directly or by means of rebates, or by any other device, transportation of or for such meats, from the points of the preparation and production of the same from live stock or elsewhere, to the markets for the sale of the same to dealers and consumers in other States and Territories than those wherein the same are so prepared, or the District of Columbia, at less than the regular rates which may be established or in force on their several lines of transportation, under the provisions in that behalf of the laws of the said United States for the regulation of commerce, be and the same is hereby made perpetual.

But nothing herein shall be construed to prohibit the said defendants from agreeing upon charges for cartage and delivery, and other incidents connected with local sales, where such charges are not calculated to have any effect upon competition in the sales and delivery of meats; nor from establishing and maintaining rules for the giving of credit to dealers where such rules in good faith are calculated solely to protect the defendants against dishonest or irresponsible dealers, nor from curtailing the quantity of meats shipped to a given market where the purpose of such arrangement in good faith is to prevent the over-accumulation of meats as perishable articles in such markets.

Nor shall anything herein contained be construed to restrain or interfere with the action of any single company or firm, by its or their officers or agents (whether such officers or agents are themselves personally made parties defendant hereto or not) acting with respect to its or their own corporate or firm business, property or affairs."

The general objection is urged that the bill does not set forth sufficient definite or specific facts. This objection is serious, but it seems to us inherent in the nature of the case. The scheme alleged is so vast that it presents a new problem in pleading. If, as we must assume, the scheme is entertained, it is, of course, contrary to the very words of the statute. Its size makes the violation of the law more conspicuous, and yet the same thing makes it impossible to fasten the principal fact to a certain time and place. The elements, too, are so numerous and shifting, even the constituent parts alleged are and from their nature must be so extensive in time and space, that something of the same impossibility applies to them. The law has been upheld, and therefore we are bound to enforce it notwithstanding these difficulties. On the other hand, we equally are bound by the first principles of justice not to sanction a decree so vague as to put the whole conduct of the defendants' business at the peril of a summons for contempt. We cannot issue a general injunction against all possible breaches of the law. We must steer between these opposite difficulties as best we can.

The scheme as a whole seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it. Moreover, whatever we may think of them separately when we take them up as distinct charges, they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful. *Aikens* v. *Wisconsin*, 195 U. S. 194, 206. The statute gives this proceeding against combinations in restraint of commerce among the States and against attempts to monopolize the same. Intent is almost essential to such a combination and is essential to such an attempt. Where acts are not sufficient in themselves to produce a result which the law seeks to prevent—for instance, the monopoly—but require further acts in addition to the mere forces of nature to bring that result to pass, an intent to bring it to pass is necessary in order to produce a dangerous probability that it will happen. *Commonwealth* v. *Peaslee*, 177 Mass. 267, 272. But when that intent and the consequent dangerous probability exist, this statute, like many others and like the common law in some cases, directs itself against that dangerous probability as well as against the completed result. What we have said disposes incidentally of the objection to the bill as multifarious. The unity of the plan embraces all the parts.

One further observation should be made. Although the combination alleged embraces restraint and monopoly of trade within a single State, its effect upon commerce among the States is not accidental, secondary, remote or merely probable. On the allegations of the bill the latter commerce no less, perhaps even more, than commerce within a single State is an object of

attack. See *Leloup* v. *Port of Mobile*, 127 U. S. 640, 647; *Crutcher* v. *Kentucky*, 147 U. S. 47, 59; *Allen* v. *Pullman Co.*, 191 U. S. 171, 179, 180. Moreover it is a direct object, it is that for the sake of which the several specific acts and courses of conduct are done and adopted. Therefore the case is not like *United States* v. *E. C. Knight Co.*, 156 U. S. 1, where the subject matter of the combination was manufacture and the direct object monopoly of manufacture within a State. However likely monopoly of commerce among the States in the article manufactured was to follow from the agreement it was not a necessary consequence nor a primary end. Here the subject matter is sales and the very point of the combination is to restrain and monopolize commerce among the States in respect of such sales. The two cases are near to each other, as sooner or later always must happen where lines are to be drawn, but the line between them is distinct. *Montague* v. *Lowry*, 193 U. S. 38.

So, again, the line is distinct between this case and *Hopkins* v. *United States*, 171 U. S. 578. All that was decided there was that the local business of commission merchants was not commerce among the States, even if what the brokers were employed to sell was an object of such commerce. The brokers were not like the defendants before us, themselves the buyers and sellers. They only furnished certain facilities for the sales. Therefore, there again the effects of the combination of brokers upon the commerce was only indirect and not within the act. Whether the case would have been different if the combination had resulted in exorbitant charges, was left open. In *Anderson* v. *United States*, 171 U. S. 604, the defendants were buyers and sellers at the stock yards, but their agreement was merely not to employ brokers, or to recognize yard-traders, who were not members of their association. Any yard-trader could become a member of the association on complying with the conditions, and there was said to be no feature of monopoly in the case. It was held that the combination did not directly regulate commerce between the States, and, being formed with a different intent, was not within the act. The present case is more like *Montague* v. *Lowry*, 193 U. S. 38.

For the foregoing reasons we are of opinion that the carrying out of the scheme alleged, by the means set forth, properly may be enjoined, and that the bill cannot be dismissed.

So far it has not been necessary to consider whether the facts charged in any single paragraph constitute commerce among the States or show an interference with it. There can be no doubt, we apprehend, as to the collective effect of all the facts, if true, and if the defendants entertain the intent alleged. We pass now to the particulars, and will consider the corresponding parts of the injunction at the same time. The first question arises on the sixth section. That charges a combination of independent dealers to restrict the competition of their agents when purchasing stock

for them in the stock yards. The purchasers and their slaughtering establishments are largely in different States from those of the stock yards, and the sellers of the cattle, perhaps it is not too much to assume, largely in different States from either. The intent of the combination is not merely to restrict competition among the parties, but, as we have said, by force of the general allegation at the end of the bill, to aid in an attempt to monopolize commerce among the States.

It is said that this charge is too vague and that it does not set forth a case of commerce among the States. Taking up the latter objection first, commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one State, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the States, and the purchase of the cattle is a part and incident of such commerce. What we say is true at least of such a purchase by residents in another State from that of the seller and of the cattle. And we need not trouble ourselves at this time as to whether the statute could be escaped by any arrangement as to the place where the sale in point of law is consummated. See *Norfolk & Western Ry.* v. *Sims*, 191 U. S. 441. But the sixth section of the bill charges an interference with such sales, a restraint of the parties by mutual contract and a combination not to compete in order to monopolize. It is immaterial if the section also embraces domestic transactions.

It should be added that the cattle in the stock yard are not at rest even to the extent that was held sufficient to warrant taxation in *American Steel & Wire Co.* v. *Speed*, 192 U. S. 500. But it may be that the question of taxation does not depend upon whether the article taxed may or may not be said to be in the course of commerce between the States, but depends upon whether the tax so far affects that commerce as to amount to a regulation of it. The injunction against taking part in a combination, the effect of which will be a restraint of trade among the States by directing the defendants' agents to refrain from bidding against one another at the sales of live stock, is justified so far as the subject matter is concerned.

The injunction, however, refers not to trade among the States in cattle, concerning which there can be no question of original packages, but to trade in fresh meats, as the trade forbidden to be restrained, and it is objected that the trade in fresh meats described in the second and third sections of the bill is not commerce among the States, because the meat is sold at the slaughtering places, or when sold elsewhere may be sold in less than the original packages. But the allegations of the second section, even if they import a technical passing of title at the slaughtering places, also

import that the sales are to persons in other States, and that the shipments to other States are part of the transaction—"pursuant to such sales"—and the third section imports that the same things which are sent to agents are sold by them, and sufficiently indicates that some at least of the sales are of the original packages. Moreover, the sales are by persons in one State to persons in another. But we do not mean to imply that the rule which marks the point at which State taxation or regulation becomes permissible necessarily is beyond the scope of interference by Congress in cases where such interference is deemed necessary for the protection of commerce among the States. Nor do we mean to intimate that the statute under consideration is limited to that point. Beyond what we have said above, we leave those questions as we find them. They were touched upon in the *Northern Securities Company's Case*, 193 U. S. 197.

We are of opinion, further, that the charge in the sixth section is not too vague. The charge is not of a single agreement but of a course of conduct intended to be continued. Under the act it is the duty of the Court, when applied to, to stop the conduct. The thing done and intended to be done is perfectly definite: with the purpose mentioned, directing the defendants' agents and inducing each other to refrain from competition in bids. The defendants cannot be ordered to compete, but they properly can be forbidden to give directions or to make agreements not to compete. See *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211. The injunction follows the charge. No objection was made on the ground that it is not confined to the places specified in the bill. It seems to us, however, that it ought to set forth more exactly the transactions in which such directions and agreements are forbidden. The trade in fresh meat referred to should be defined somewhat as it is in the bill, and the sales of stock should be confined to sales of stock at the stock yards named, which stock is sent from other States to the stock yards for sale or is bought at those yards for transport to another State.

After what we have said, the seventh, eighth and ninth sections need no special remark, except that the cartage referred to in section nine is not an independent matter, such as was dealt in *Pennsylvania Railroad* v. *Knight*, 192 U. S. 21, but a part of the contemplated transit—cartage for delivery of the goods. The general words of the injunction "or by any other method or device, the purpose and effect of which is to restrain commerce as aforesaid," should be stricken out. The defendants ought to be informed as accurately as the case permits what they are forbidden to do. Specific devices are mentioned in the bill, and they stand prohibited. The words quoted are a sweeping injunction to obey the law, and are open to the objection which we stated at the beginning that it was our duty to avoid. To the same end of definiteness so far as attainable, the words "as charged in the bill," should be inserted between "dealers in such

meats," and "the effect of which rules," and two lines lower, as to charges for cartage, the same words should be inserted between "dealers and consumers" and "the effect of which."

The acts charged in the tenth section, apart from the combination and the intent, may, perhaps, not necessarily be unlawful, except for the adjective which proclaims them so. At least we may assume, for purposes of decision, that they are not unlawful. The defendants severally lawfully may obtain less than the regular rates for transportation if the circumstances are not substantially similar to those for which the regular rates are fixed. Act of Feb. 4, 1887, c. 104, § 2, 24 Stat. 379. It may be that the regular rates are fixed for carriage in cars furnished by the railroad companies, and that the defendants furnish their own cars and other necessities of transportation. We see nothing to hinder them from combining to that end. We agree, as we already have said, that such a combination may be unlawful as part of the general scheme set forth in the bill, and that this scheme as a whole might be enjoined. Whether this particular combination can be enjoined, as it is, apart from its connection with the other elements, if entered into with the intent to monopolize, as alleged, is a more delicate question. The question is how it would stand if the tenth section were the whole bill. Not every act that may be done with intent to produce an unlawful result is unlawful, or constitutes an attempt. It is a question of proximity and degree. The distinction between mere preparation and attempt is well known in the criminal law. *Commonwealth* v. *Peaslee*, 177 Mass. 267, 272. The same distinction is recognized in cases like the present. *United States* v. *E. C. Knight Co.* 156 U. S. 1, 13. *Kidd* v. *Pearson*, 128 U. S. 1, 23, 24. We are of opinion, however, that such a combination is within the meaning of the statute. It is obvious that no more powerful instrument of monopoly could be used than an advantage in the cost of transportation. And even if the advantage is one which the act of 1887 permits, which is denied, perhaps inadequately, by the adjective "unlawful," still a combination to use it for the purpose prohibited by the act of 1890 justifies the adjective and takes the permission away.

It only remains to add that the foregoing question does not apply to the earlier sections, which charge direct restraints of trade within the decisions of the Court, and that the criticism of the decree, as if it ran generally against combinations in restraint of trade or to monopolize trade, ceases to have any force when the clause against "any other method or device" is stricken out. So modified it restrains such combinations only to the extent of certain specified devices, which the defendants are alleged to have used and intend to continue to use.

Decree modified and affirmed.